

A regular meeting of the City Council of the City of Newburgh was held on Monday, July 11, 2011 at 7:00 P.M. in the Council Chambers at City Hall, 3<sup>rd</sup> 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 Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard - 5

Councilwoman Angelo moved and Councilwoman Bello seconded that the minutes of the regular meeting of June 20, 2011 be approved.

Councilwoman Bell said that she wanted to make an amendment to the minutes and she received an e-mail from Deputy Clerk, Katrina Cotten but did not have a chance to read it yet so she could abstain.

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

Nays - Councilwoman Bell - 1

CARRIED

#### REPORTS

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

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

CARRIED

#### COMMUNICATIONS

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

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

CARRIED

#### PRESENTATION

The Newburgh Rowing Club presented the Fire Department and the Police Department with awards of appreciation for their participation in the Northeast Rowing Championship event on May 21<sup>st</sup> and 22<sup>nd</sup>.

**PROPOSED PUBLIC HEARING**

**RESOLUTION NO.: 134 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR AUGUST 8, 2011 TO HEAR PUBLIC COMMENT  
CONCERNING A LOCAL LAW AMENDING  
CHAPTER 270 ENTITLED "TAXATION" TO PROVIDE FOR THE  
ADDITION OF ARTICLE XI ENTITLED  
"EXEMPTION OF CAPITAL IMPROVEMENTS TO RESIDENTIAL  
BUILDINGS"**

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning an Local Law amending Chapter 270 entitled "Taxation," to provide for the additional of Article XI, entitled "Exemption of Capital Improvements to Residential Buildings"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 8th day of August, 2011, in the 3<sup>rd</sup> Floor Council Chambers, City Hall, 83 Broadway, Newburgh, New York.

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

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

**ADOPTED**

**PROPOSED PUBLIC HEARING**

**RESOLUTION NO.: 145 - 2011**

**OF**

**JULY 11, 2011**

**RESOLUTION SCHEDULING A PUBLIC HEARING FOR AUGUST 8, 2011  
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW  
AMENDING ARTICLE VIII OF THE CITY CHARTER ENTITLED  
“FINANCIAL PROCEDURES” SECTION C8.89, “WATER AND SEWER  
BILLS; RELEVY OF UNPAID CHARGES WITH GENERAL CITY TAX” AND  
A LOCAL LAW AMENDING SECTION 248-2 ENTITLED “WHEN RENTS  
DUE AND PAYABLE; FILING AND CONFIRMATION OF ROLLS” OF  
CHAPTER 248 “SEWERS” OF THE CODE OF THE CITY OF NEWBURGH**

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a Local Law amending Article VIII of City Charter Section C8.89 entitled “Water and Sewer Bills; Relevy of Unpaid Charges with General City Tax” a Local Law amending Section 248-2 entitled “When Rents Due and Payable; Filing and Confirmation of Rolls” of Chapter 248 “Sewers” within the Code of the City of Newburgh; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 8<sup>th</sup> day of August, 2011, in the 3<sup>rd</sup> Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

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

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

**ADOPTED**

145-11

LOCAL LAW NO.: \_\_\_\_\_ - 2011

OF

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A LOCAL LAW AMENDING ARTICLE VIII OF THE CITY CHARTER ENTITLED "FINANCIAL PROCEDURES" SECTION C8.89, "WATER AND SEWER BILLS; RELEVY OF UNPAID CHARGES WITH GENERAL CITY TAX" WITHIN THE CODE OF THE CITY OF NEWBURGH

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

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law amending Article VIII of the City Charter entitled "Water and Sewer Bills; Relevy of Unpaid Charges with General City Tax" Section C8.89, within the Code of the City of Newburgh.

SECTION 2 - AMENDMENT

Article VIII, Section C8.89, "Water and Sewer Bills; Relevy of Unpaid Charges with General City Tax" shall be amended to read as follows:

A. The Council shall establish, from time to time, the water rates to be paid by the consumers of water. Such water charges shall be a lien upon the real property on which or in connection with which the water was used. ~~Unpaid water charges in arrears for 30 days or longer shall be subject to a penalty of 10% per annum of the amount due.~~ Bills for water charges shall be prepared and sent to each owner of real property on which or in connection with water used on a quarter annual basis commencing on October 1, 1996, and thereafter on each January 1, April 1, July 1 and October 1, following in the same manner as water and sewer charges have heretofore been billed. Water bills are due and payable without penalties by the last day of the month in which the water bill is issued. Water bills that remain unpaid after 30 days will be subject to a penalty of 10% per quarter on the outstanding water bill account balance.

B. Partial Payments. Effective October 1, 2011, partial payments for water bills will be accepted by the City Collector. Partial payments will be credited against the account of the

Underlining denotes additions  
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property until all arrears and penalties have been fully paid. All outstanding water bill account balances on October 1 of each year shall be added to the real estate taxes for the following year in accordance with the provisions of Section C8.85 and C8.89(C).

C. The City Collector, on or before the second Monday in October of each year, shall report all water and sewer charges that remain unpaid as of the first day of October in any year and shall file annually with the Council a statement containing a brief description of the property upon which or in connection with which the water was used, the name of the owner and the amount chargeable to each. The Council shall then, no later than its regular meeting on the fourth Monday in November of each year, levy all amounts remaining unpaid on the date taxes are levied against the real property for which or in connection with which such water was provided. All of the provisions of the laws of the State of New York and this charter covering the enforcement and collection of unpaid city taxes or assessments for special improvements not inconsistent herewith shall apply to the collection of such unpaid water charges.

⊖ D. Sewer rents shall continue to be calculated and imposed in accordance with Local Law No. 1-1970, as amended, and shall be billed, relieved and enforced at the same times and in the same manner as provided herein for water charges.

⊖ E. This section shall take effect on October 1, 1996 for all water and sewer bills rendered on October 1, 1996, or thereafter. Acceptance of partial payments shall take effect for water and sewer bills rendered on October 1, 2011 or thereafter.

### SECTION 3 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

### SECTION 4 - EFFECTIVE DATE

This Local Law shall take effect on October 1, 2011 after it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

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LOCAL LAW NO.: \_\_\_\_\_ - 2011

OF

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A LOCAL LAW AMENDING SECTION 248-2  
ENTITLED "WHEN RENTS DUE AND PAYABLE;  
FILING AND CONFIRMATION OF ROLLS" OF CHAPTER 248  
"SEWERS" OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

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

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law amending Section 248-2 entitled "When Rents Due and Payable; Filing and Confirmation of Rolls" of Chapter 248 "Sewers" of the Code of the City of Newburgh.

SECTION 2 - AMENDMENT

Chapter 248, Section 248-2, "When Rents Due and Payable; Filing and Confirmation of Rolls" shall be amended to read as follows:

§ 248-2. When rents due and payable; filing and confirmation of rolls.

A. The above-mentioned sewer rents shall commence on April 1, 1970, and shall be payable on a quarterly basis on the first days of July, October, January and April in each year.

B. At the same time the roll of water rents has been completed, the roll of the above-mentioned sewage rents shall be completed, and they shall be filed in the same manner in the office of the City Clerk as are rolls of water rents. These rolls shall be delivered to the Council and confirmed in the same manner as provided in § C8.85 of the Charter of the City of Newburgh, and the provisions of ~~said section~~ Sections C8.85, C8.86 and C8.89 referring to the collection of water rents and bills shall be in all ways applicable to the collection of the sewer rents herein and before referred to.

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SECTION 3 - VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 4 - EFFECTIVE DATE

This Local Law shall take effect on October 1, 2011 after it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

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## **PUBLIC HEARING #1**

**Mayor Valentine called a public hearing that was advertised for this meeting concerning the reenactment of Local Law No. 6-2007, which added Article V entitled "Exemption for First Time Homebuyers of Newly Constructed Homes" to Chapter 270 "Taxation" of the Code of the City of Newburgh, by amending income levels and the exemption term.**

**There being no one wishing to speak, this public hearing was closed**

## **PUBLIC HEARING #2**

Mayor Valentine called a public hearing that was advertised for this meeting regarding the Housing and Community Development needs of the City of Newburgh in order to assist in the preparation of its Housing and Community Development Plan for Fiscal Year 2012.

Mario Cippolone, Independent Living expressed the importance of remembering the need for housing for people with disabilities of all kinds. He thinks that the CDBG program is an excellent program and is something that the City of Newburgh should be proud of. People with disabilities live in the City of Newburgh too and the Federal Government is watching municipalities throughout the Country to see if they are going to comply with the Americans with Disabilities Act so he encouraged them to continue to put people with disabilities at the forefront. Independent Living will be working with the City of Newburgh and they are currently drawing up plans for a high density housing project that they are really excited about. They are vested in the City of Newburgh so they are here to stay.

Loretta Manning, Lander Street thanked Mr. Herbek and Mr. Lynch for taking them to Albany to review the hiring and training center for the low income community. She feels that Newburgh is at the breaking point of bankruptcy and we are sinking but we don't have to be. She wants to preserve the beauty of the City of Newburgh and make people want to live here again. With the abandoned buildings we can create jobs because we need sustainable housing for the low income community. With the misspending of money for many years we are at a boiling point and she would rather see us swim than sink. She understands the Council has a hard time deciding where the money goes and not everyone may agree with it but they appreciate and understand the time that it takes. Desperate times call for desperate measures and for the last four years they have been begging to get this program started so they appreciate that they are planning to hire someone to start this project. They just want to make sure that they are not just going to be here to collect a paycheck. They want to make sure that this is actually going to get started so that they can get people off the streets. More jobs bring in more revenue. In 2012 they have some proposals for where the CDBG money should be going as far as a Job Training Center and they want it on record for the current and new Mayor and Council members.

Beatrice, 10 Clark Street said that she has a few ideas on how she thinks the CDBG money should be spent. She wants to see it spent on revitalizing jobs for the community and getting people to do construction on buildings that don't have infrastructural issues. She would also like to see the money used to create jobs for people who have children and for them to get child care.

This would mean a lot to the women in the community and keep the kids off of the streets and away from gang violence. If you fund a job training and hiring program, then people can get the skills they need to get and keep jobs. She wants to see more parks for children in the community and jobs for people to restore more parks with the empty lots. This will give the children and families something to do and they won't be afraid to come out of their homes. You can also open a safe teen center to have fun with a leadership and mentorship program for tutoring, college preparation, job training, sex education, parenting programs, home and career skills and home economics to know how to spend money properly if they get a job. We also need to create jobs that will give back to the City like reconstruction, maintenance and rebuilding the sidewalks and streets and building community gardens that are maintained continuously so it is an ongoing job and we will have the ability to create more jobs and breathe life back into the City. This was once a prosperous and peaceful place and she would like to see that restored.

Timothy Hayzill, City of Newburgh said that what should have been done over the years has not been done which is why we are in the situation we are in now. Nothing is being done. We hear about organizations coming into this city but what about the people who live here? What about census tract four and five? Everything is being taken from that area and there is no assistance. No one is doing anything to prevent kids from joining gangs or creating functions for the young people. The best move this Council has made is to call in the Federal Government to lock our youth up. Now that they are locked up what are you going to do with the next group of young people?. Are you going to create a situation where they can have some job skills and make an honest living? Are you going to create a cultural center and bring people in to teach them the necessary social skills they need to move forward? We cannot continue this way.

Darlene Griffin, 170 Grand Street said that she would like to see some work started. She would like to see the abandoned houses restored, the sidewalks repaired and the streets fixed which would bring in some revenue. She would like to see some technology and engineering plans started on how to refurbish these houses. The sooner we get started the better it will be for everyone and we will all be happy. There are so many homeless people with all of these houses. Fix one home at a time and put a family in there which would create revenue coming back into the City. This would be better than paying for the hotels that they are living in. She understands that it is a slow process but we have to start somewhere.

Dan, 144 Washington Street, member of CVH said that they have been talking for several years now about the Newburgh Builds Newburgh Job Center and they are finally starting to see some motion. He would like to see

this City Council be the first to use CDBG money and say that they were the ones that got this started and made an impact on Newburgh.

Judy Kennedy, 162 Grand Street asked how much money do we have in the CDBG fund for 2012.

Mayor Valentine said that we don't know until the Federal Government tells us.

Judy Kenney continued that she has heard some good and thoughtful ideas tonight. It seems like people want to see something tangible and to pull this City out of this feeling of hopelessness then that is exactly what we need to do. We can't do the whole wish list but we could maybe take five of these ideas and actually do them so people see progress and begin to believe that we are moving forward. She believes that this would help everyone feel good about something in this city again. She doesn't know how they make the decision on the top priorities. What is the process on how the CDBG money gets allocated to which projects and then how do we focus on that? We have all seen this money go up in smoke in so many ways with so many different issues so who will be watching that this money goes where it is supposed to go and who will be watching the contractors to make sure that something really good comes out of this.

Omari Shakur, First Street remembers that years ago there used to be a home ownership program in place. What people are paying for rents today could be a mortgage payment so we could take people that are in low poverty areas and put them in programs to become home owners. With all of these vacant buildings we could put something in place to fix them up and people that have been living here for years could be homeowners instead of paying rent. The Land Bank that is being proposed looks like it is just targeting one specific area so he hopes that before they put a Land Bank proposal in that they consider putting in some type of home ownership program for the people that are paying such high rents. They could learn how to own their own homes.

Janet Gianopolous, City of Newburgh keeps hearing people ask about programs for kids but she keeps hearing from several organizations that the kids are not taking advantage of their programs. There is the Boys and Girls club, Boy Scouts and Girl Scouts, etc. She suggested that people contact these organizations and let them know what they feel they are not providing or take a child and find out what is available. There are more than a dozen programs like this in the City of Newburgh and they want to know where the kids are. She added that we are half way into the year and before we can plan for next

year we should get a report on what has been expended so far this year and then make a decision on what we might use the money for next year.

Gay Lee, Forsythe Place would like some funds to be used to clean up the properties owned and rented by absentee landlords. They are renting out condemned buildings to people who are still paying them rent. When we know these things are happening can we make the repairs and charge it to the landlord or levy their taxes? This has to stop. The first time homebuyers program is a good idea but some people need help from us now and they aren't getting it. She would like to also see a supermarket a movie theater and a skating rink here in the City of Newburgh.

Denise Ribble, City of Newburgh said that she supports the workforce development component of the CDBG funds. She received information regarding the Potential Workforce Initiatives Act. She thinks it would behoove the City to look at coordinating the efforts that were made by the City Manager and Councilwoman Bell when they went to look at the workforce development initiatives. In our proposal we talked about coordinating some of these many agencies that have programs because one of our big issues is where are the children? Why aren't they going to these programs and why are the programs operating in this silo effect? We need to think about how we will position ourselves to be able to get funding for the Workforce Initiatives Act. She also thinks that the things we are doing with the Land Bank and with funding the code enforcement ordinances that were passed earlier this year, we could be looking at how to train individuals to assist in the rehab of properties and paying them to do that and then bill those landlords that don't follow the process. We have the law so let's get a group together and make sure that we have people who are trained and look at how we can move forward to have jobs for our citizens in the City of Newburgh. There are a large number of people who are the strategic partners so it is important to meet again. They want to have support and direction from the Council around this workforce development initiative because without it we will not be able to position ourselves to receive any funding.

Mary Ann Prokosch, City of Newburgh said that she was disappointed that the amount for sidewalks was decreased. Many years ago there was a program in this city that replaced sidewalks. The city contracted with the mason and the people who had their sidewalks repaired would pay it back in their tax bills so that money could come back in to do more sidewalks. She also noticed that we have less funds but no decrease proportionately to the operating expenses. If we lost \$200.00, it all shouldn't come from the projects. Part of it should come out of what we are paying to administer it.

Michael Gabor, Grand Street said that there is \$170,000.00 of administration costs in a budget of about \$800,000.00. What are they doing that they need to spend all that money on salaries to administer that amount of money? They also cut an excellent program through Habitat called "A Brush with Kindness" to improve the outside of houses for the elderly and people who have trouble paying their bills. This would have helped people that need this done and it would have helped with the appearance of our city. Instead of cutting \$50,000.00 from administration costs they cut this program which he thinks is a sin because Habitat has an incredible track record in this City. This program would have benefitted everyone. Sidewalks were also cut and there are many people here with disabilities that can't use the sidewalks the way they are.

There being no one else wishing to speak for or against, this public hearing was closed.

## COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Janet Gianopolous, City of Newburgh said in regard to resolution #121-2011 that with a project like this the Council needs some key information to make a decision. One thing they need is a cost projection. This is a twenty year contract and at a certain point during that contract they will be paying more per ton than we are currently paying. We also need an evaluation of the contract by persons involved such as DPW, Comptroller and Corporation Counsel. Lastly we need some kind of status awareness regarding lawsuits being brought against this company. If we are going to be paying more then why would we consider this?

Barbara Smith, Powell Avenue asked if we can logically enter into an agreement that has a potential cost to the taxpayers for more money than what we are paying now. She did a fast analysis from the year 2014, when the escalating cost is supposed to kick in, to 2023. By 2023 we will be paying \$82.50 per ton which far exceeds what we are paying now. Mr. Taylor is a very nice man but he is also in the business to make money. If he is taking our garbage and making a product that will be sold for profit, wouldn't it be logical to negotiate down and not for our services to go higher. We should be going lower because we are giving him what is required for him to make the money. How are we paying the County now for our garbage? Do we pay annually or monthly? There are too many questions about this contract and she doesn't believe that the people who are going to spend her money have really taken the time to look at it to say that there are too many questions and that this money cannot be spent this way. There are ten pending legislations that have not yet been cleared and until we clear them and understand them we should hold off and not be forced into a fast decision.

Zachary Acosta, City of Newburgh had some questions about the boat launch ramp. He asked what the process for raising the fee is. Where does the money go and is there any oversight to the fees collected.

Denise Ribble, City of Newburgh said that items #19 and #20 talk about continuing the contract with Mr. Hadley and she believes there was discussion about him working on specific projects and coming in on a per diem basis. A certain number of hours were scheduled for him to work on the sanitation RFP and she is wondering where that is at because the original product was not that great. Item #30 she supports executing the agreement with the Armory Unity Center and she assumes that some of the changes that were requested have been made and that they are satisfactory to the Council. It is very important to have this agreement so that the long term operation, funding for the repairs and capital improvements and the mission of that center can move

forward. In regard to resolution #121-2011 under old business she feels that some items need to be explored a bit more. What happens if TBE gets an increase in their capacity is that a point where the city can renegotiate its contract? She thinks that the five year term for renewal after the twenty years has passed is way too long. Nobody has looked at any kind of sub contracting and she brought that up at the Orange County Planning Meeting so she has some information to share with the Council about the response that she received. In the County's RFP this mostly has to do with addressing the closure of the 17K landfill. All of these things have to be looked at and if they need a special meeting to get answers then they should wait on this.

Judy Kennedy, 162 Grand Street said that items #30 and 33 are both long term contracts. One is for twenty-five years and the other is for twenty years. People come here to contract and they have written a contract in their benefit so she would like to know if we have sat down and negotiated with Taylor Biomass and gone through it to see what is acceptable and what is not. We need to sit down with them and figure this out. We don't have to take what is presented to us; we have to negotiate something that is acceptable to both sides. The same goes for the twenty-five year contract with the Armory. She just wants to make sure that we are looking out for the city and taking advantage of some good opportunities.

Brenda McPhail, Varick Homes said that she would like some clarity on resolution #140-2011. She asked if this is money that will just disappear or will it be used for the Project Safe Neighborhood program? We have to make up our minds what we are going to do. We either have to work together and make it a safe neighborhood or keep calling it the "Hood". In regard to resolution #144-2011, with CDBG we are trying to strategize for building demolitions so why do we waste time giving extensions. The whole City of Newburgh needs to be rehabilitated. Walk the streets and take a look and you will see all of the abandoned buildings that need to be rehabilitated. Stop closing your eyes to what is really going on and be the city officials that you are supposed to be. If you don't care about the City of Newburgh, don't waste our time.

Deirdre Glenn, 15 Bay View Terr. said that she is representing the Armory Unity Center and they will be having a public meeting next Monday at 6:00 p.m. at the Armory and all are welcome to attend. They have been negotiating for six full months now and she hopes that they are close to an agreement. In this agreement with the City she is trying to raise capital funds for the renovation and restoration of the armory. Most big donors do not want to give money to something with a two or three year forecast. They want to know that the mission is secure. So they are asking for a license to operate for the mission of athletic programs , educational programs and event planning

that benefit the people of the city. Any money made after renovations are made goes back into the City of Newburgh. The profits come back to the city not to an entity itself. She hopes that everyone supports them and hopes that everyone will join the meeting next Monday evening.

Michael Gabor, Grand Street said that we have two contracts here. They may be great or bad for the city but a few years ago they talked about not changing the City Manager because we were changing two City Council people. Here we are looking to sign twenty and twenty-five year contracts that are being negotiated by an Acting City Manager who does not live here and who is making a tremendous amount of money. We also have three City Council people who will only be here a few more months so why are we making these decisions now? What is the rush? In regard to Mr. Hadley, why do we have six people and an independent financial person looking at our finances? We are talking about hiring this person for another few months at \$70.00 an hour. Why spend all this money if we don't have any? It's like a joke. In regard to the Taylor contract, he has a feeling that they will think about this seriously. Whether we pay him or the County we shouldn't be the first to sign. Let the County negotiate. They are a bigger entity and they will get better benefits and have better people watching out for what that contract is about than the individual communities do. It's not a lose, lose situation if we don't sign by July 22nd. No one else has signed it yet and that needs be looked into.

Mary Ann Prokosch, Galloway Avenue said in regard to items #20 and #34 she feels like with something like this you need to have an end date. In regard to item #21, how much is this for? Is it coming out of the contingency and is this for a grievance? In regard to item #23, she is curious to know what we paid previously for those items. On the Unity Center, she feels that they are doing something wonderful but they have a mission statement. Is their mission statement narrower than what the State has said we can do with the property? Do they need all of the property and the whole building? Can they operate in some of it and leave some space for us to use? She has no problem with the twenty-five years but doesn't want to give them more than what they need. This is all about contracts and what is best for the city. In regard to Taylor, has anyone talked to the County? She keeps hearing that if the County gets the contract they will still charge us \$80.00. She thinks that there would be a revolt from the municipalities in Orange County if they found out that the County was paying \$60.00 per ton and charging \$80.00. Has anyone talked to the County and knows for a fact that our rate will not decrease if theirs does.

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

## COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

Mayor Valentine said in response to the last question regarding Taylor that he did talk to the County Executive on Friday and asked him if he was planning on signing a contract with Taylor and the indication was that "yes" they are negotiating a contract right now. Some people have asked us why we are not negotiating but we can't negotiate unless we give the people who are our negotiators the ability to negotiate. The County Executive has said that they will be in some way negotiating a contract for \$65.00 or \$66.00 and the fee that will be charged to the municipalities in Orange County will be around \$80.00. Revolt or not if you don't have a place to take your garbage you will still pay the \$80.00. What is going on is availability for certain municipalities to take advantage of a cost saving measure. What Mr. Taylor is doing has high technology and support from federal agencies, Senators and Congressman who believe in the one hundred million dollars of federal money that is going into this as a loan guarantee. If it doesn't get built, then there is no contract. If it does get built and we don't seize this opportunity, we will be paying approximately \$15.00 more per ton starting whenever the County starts. The County will not give us a break. This is the same County that would not tweak our sales tax agreement which could have been done in the blink of an eye. There has also been talk about a deadline date of July but he does not know that because there was also supposedly a deadline date in June. Goshen, Montgomery, Cornwall, Walden and New Windsor have all passed resolutions giving the authority to negotiate. New Windsor met on Wednesday evening and gave the Supervisor and Corporation Counsel the power to negotiate. If we want to take this to the next level then one of the options would be to give authority to the City Manager to negotiate. If then there is a negotiated contract that seems reasonable we can then have a special meeting and vote. If there isn't and the window of opportunity closes then we end up paying what we are paying now plus a little bit more because it will go up. The Transfer Station at Stewart will eventually be closed in a year or two.

Councilwoman Bell said that it sounds to her like Mayor Valentine is selling this hard. At this point with the information that they have she knows how she is going to vote.

Mayor Valentine said that a question was asked if we have contacted the County. The answer is "yes" and what the answer was from the County. They are not going to cut us a break. They don't care. The other license agreement is with the Armory. Yes it is difficult to make a long range commitment but you are also talking about an organization that is trying to raise long range money. With the Armory it makes sense because you want

the stability there for them to go out and raise the money. It might be uncomfortable because we as the current Council will make that decision for future Council members but we did a sewer arrangement with the Town of Newburgh for twenty years which holds other Council members to it as well.

Councilman Dillard feels that they need input from the citizens so he suggested that they have a question and answer session with Taylor, the City Manager, Corporation Counsel, DPW and the Comptroller. Bring all the people in and hash this thing out and then we could call a special meeting to vote on it. We must do this fast because normally things are done here very slow. He waited two years to get buildings demolished so this is urgent and we should move on this immediately.

Councilwoman Bell said that she is not feeling the urgency that they are talking about. She is feeling that they are being pushed into something. They don't even have all of the information and answers to the basic questions that they need concerning this Taylor proposal. She really doesn't understand why they are pushing this so hard.

Councilman Dillard said that he is only doing what is right for the City by giving everyone input. With this input they will get the answers and they can continue to talk about it. We are not voting on anything or signing any contracts. They are just dialoguing and people are getting answers.

Mayor Valentine asked if there is a way to re-structure a resolution that doesn't say to sign a contract. Obviously we aren't signing a contract; we are negotiating. There would have to be something in the wording that changes that if it passes.

Councilwoman Bell said that the language should be that they are negotiating. She heard Councilman Dillard say that we are doing is fact finding and getting information but now she heard the Mayor say that we are negotiating.

Mayor Valentine said if you want to call it fact finding you can. You can call it whatever you want. When it comes up for a vote lets find out if this Council even wants to move forward on it.

Acting City Manager, Richard Herbek, said that currently he believes we are paying about \$80.00 per ton and all of our solid waste is being transferred to a landfill in Pennsylvania. Landfills in this Country are being closed for many reasons but primarily for environmental reasons. We can't assume that the \$80.00 rate is going to remain for twenty years. We don't know what it could be. It could be doubled, tripled or quadrupled. This is an

expensive facility to build and he believes there are certain bonds and loans involved over that period of time. This is tied to the loan guarantees over that period of time as part of the fact finding that we need to do. Somehow we are going to need to find a way to get rid of our municipal solid waste and there needs to be a method in place.

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

**RESOLUTION NO.: 135 - 2011**

**OF**

**JULY 11, 2011**

**RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING  
WITH THE POLICE SUPERIOR OFFICERS ASSOCIATION  
OF NEWBURGH, NEW YORK, INC. TO PROVIDE  
FOR ADDITIONAL BENEFITS PROVIDED FOR  
IN SECTION 242 OF THE MILITARY LAW  
FOR POLICE SERGEANT FRANK LABRADA  
WHILE SERVING ACTIVE DUTY IN THE MILITARY  
EFFECTIVE ON OR ABOUT NOVEMBER 30, 2011**

**WHEREAS**, the City of Newburgh and the Police Superior Officer's Association of Newburgh, New York, Inc. (hereinafter "the Union"), are parties to a collective bargaining agreement; and

**WHEREAS**, certain members of the Union serving in the military reserve have been or are liable to be called to active duty as a result of the ongoing conflicts overseas to defend American freedom and protect our people from their declared enemies, and will continue to be required to interrupt regular City employment; and

**WHEREAS**, the City Council of the City of Newburgh wishes to grant certain additional benefits to such employees; and

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

**NOW, THEREFORE, BE IT**

**RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute on behalf of the City of Newburgh, the Memorandum of Understanding annexed hereto, or in substantially the same form; and be it further

**RESOLVED**, that the Council of the City of Newburgh hereby extends its esteem, gratitude, appreciation and admiration to every member of the Union and all others called to active duty on behalf of this Country.

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

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

**ADOPTED**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
POLICE SUPERIOR OFFICERS ASSOCIATION OF NEWBURGH, INC.  
AND  
THE CITY OF NEWBURGH**

**WHEREAS**, the **CITY OF NEWBURGH (CITY)** and **POLICE SUPERIOR OFFICERS ASSOCIATION OF NEWBURGH, INC. (PSOA)**, are desirous of entering into an agreement between the parties to provide for extended military benefits for members who are military reservists and are federally activated to military duty as of the result of the events of September 11, 2001 and the ongoing conflicts overseas beyond the benefits mandated by New York State Military Law.

**IT IS HEREBY UNDERSTOOD AND AGREED BY THE PARTIES HERETO AS FOLLOWS:**

1. Members of the PSOA ordered to active military duty (including ordered service in the reserve force) as a result of the events of September 11, 2001, and the ongoing conflicts overseas, shall be entitled to receive the following benefits:

- a) Members who have exhausted their entitlement to paid military leave under Section 242 of the Military Law shall be entitled to an additional thirty (30) calendar days or twenty-two (22) working days of supplemental military leave at full pay, whichever is greater, in any one calendar year, not exceeding in total sixty (60) calendar days for any one continuous period of absence;
- b) Members who have exhausted their entitlement to the paid leave set forth in paragraph (a) above shall be entitled to military leave at a rate of pay equal to the Member's rate of pay pursuant to the Collective Bargaining Agreement less the compensation received by the Member as a result of his or her active duty. The Member shall provide the city with an "enlisted pay chart" establishing the applicable military rate of pay.;
- c) Members shall receive the same individual or family health insurance benefits provided pursuant to the Collective Bargaining Agreement, as received by such members prior to their date of activation;
- d) Members shall accrue vacation leave at the rate set forth in the Collective Bargaining Agreement during the period they receive benefits pursuant to this Memorandum.

2. The benefits provided in paragraph 1 of this Memorandum shall be in effect from November 30, 2011 to and including November 30, 2012. The terms of this

Memorandum may be extended by resolution in the event that the Member's active duty status extends beyond November 30, 2012.

3. The parties agree and acknowledge that this agreement shall not establish any past practice or precedent for members called for active military duty for any reason other than the events of September 11, 2001, and currently ongoing overseas conflicts in Iraq, Afghanistan and related areas.

Dated: July \_\_\_\_\_, 2011  
Newburgh, New York

AGREED TO:

CITY OF NEWBURGH

By: \_\_\_\_\_  
Richard F. Herbek, Acting City Manager

POLICE SUPERIOR OFFICERS  
ASSOCIATION OF NEWBURGH, INC.

By: \_\_\_\_\_  
, President

**RESOLUTION NO.: 136 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN  
THE CITY OF NEWBURGH AND J. DWIGHT HADLEY, CPA FOR  
PROFESSIONAL CONSULTING SERVICES IN THE AREA  
OF GOVERNMENTAL ADMINISTRATIVE AND FINANCIAL  
MANAGEMENT**

**WHEREAS**, this Council, by Resolution No.: 14-2010 of January 11, 2010, authorized the City Manager to enter into an agreement with J. Dwight Hadley, CPA for professional consulting services which expired on March 31, 2010; and

**WHEREAS**, this Council, by Resolution No.: 74-2010 of March 22, 2010, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which expired on June 30, 2010; and

**WHEREAS**, this Council, by Resolution No.: 129-2010 of June 14, 2010, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which will expire on December 31, 2010; and

**WHEREAS**, this Council, by Resolution No.: 273-2010 of December 13, 2010, authorized the City Manager to extend the agreement with J. Dwight Hadley, CPA for professional consulting services which expired on June 30, 2011; and

**WHEREAS**, the City of Newburgh wishes to enter into an agreement to provide for an additional six (6) months of service; and

**WHEREAS**, the agreement is for providing assistance in the area of governmental administrative and financial management in the form of consulting services; and

**WHEREAS**, the rate for these services is \$70.00 per hour; and

**WHEREAS**, this Council has determined that entering into this agreement is in the best interests of the City of Newburgh;

**NOW, THEREFORE BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the agreement with J. Dwight Hadley, CPA, in substantially the same form as annexed hereto with any other provision that Corporation Counsel may require, at a rate of \$70.00 per hour for consulting services in the area of governmental administrative and financial management.

**Councilwoman Bello said that at the Work Session it was decided that this would just be a very limited amount of time that we would bring him back just for certain things and suddenly we have three months worth of work.**

**Acting City Manager, Richard Herbek said that was never decided at the Work Session. He provided each of the Council members with a memorandum of the items that Mr. Hadley has been working on including the HUD financial audit, collective bargaining, capital projects and IDA. There is a lot of accounting work that needs to be undertaken in order to get all of that straightened out and lastly the Newburgh Fiscal Recovery Act requires quarterly reports to the State Comptroller's Office.**

**Councilwoman Bello asked why we have a Comptroller. This is a duplication of services.**

**Acting City Manager, Richard Herbek said that it is not a duplication of services. If this agreement is not approved, much of this work is not going to get done. For us to have come this far with the work Mr. Hadley has done he would like to see this come to a conclusion. He feels that by the end of October much of this work will have been hopefully brought to a close. It is extremely important to the City of Newburgh to get this work completed. He had a discussion with the New York State Comptroller's Office and they emphasized to him how important it is for Mr. Hadley to complete the work that is outlined in the memorandum.**

**Councilwoman Bello said that it would have been nice if they had articulated that to them. She would have liked to hear it from the Auditors if they felt that there was something so serious.**

**Acting City Manager, Richard Herbek said that it is very serious and he thinks that they will be putting the City in a precarious position if they don't complete these work assignments.**

Councilwoman Bello said that at the Work Session is was supposed to be just bringing him in "as needed" she believes was the term that was used.

Mayor Valentine said that they have a sketched out breakdown of which is CDBG and which is City from now through October. They are the A through G projects which we cut back from the original estimates because we are trying to save some money with this. There are things here that are very important and we are at the point now where some of these will actually save us some money. The capital projects and related debts will save us money and the IDA should hopefully save us some money. If you try to bring somebody else in at this particular point that is not going to work and the Newburgh Recovery Act will definitely save us some money.

Councilwoman Bello said that she understands that but it's limited. We have four months of work and she doesn't buy into it. We have a Comptroller who is generously paid.

Acting City Manager, Richard Herbek said that it is not going to get done by the Comptroller. There is not enough time in the day for the Comptroller to do this work.

Councilwoman Bell said that she did get the impression that it was going to be more on an as needed basis. She didn't get the sense that it was going to be an ongoing thing from now until October.

Councilwoman Angelo said that this is going to be for three months and she had asked for a duty statement which has been provided.

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

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

Nays - Councilwoman Bell, Councilwoman Bello - 2

ADOPTED

## AGREEMENT FOR VENDOR SERVICES

**THIS AGREEMENT** is entered into as of this \_\_\_\_\_ day of July, 2011, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the **“CITY,”** with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and **J. DWIGHT HADLEY, CPA**, an individual with an address of 14 Mountain Way, Clifton Park, New York 12065, hereinafter referred to as **“VENDOR.”**

### ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A.

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

### ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning July 1, 2011, and ending on October 31, 2011 or upon termination as provided under ARTICLE 17 TERMINATION of this Agreement.

### ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within fourteen (14) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

### ARTICLE 4. EXECUTORY CLAUSE

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

**ARTICLE 5. PROCUREMENT OF AGREEMENT**

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

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

**ARTICLE 6. CONFLICT OF INTEREST**

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole

or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

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

**ARTICLE 7. INDEPENDENT CONTRACTOR**

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

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or

unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

#### **ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING**

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

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

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

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

#### **ARTICLE 10. BOOKS AND RECORDS**

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

#### **ARTICLE 11. RETENTION OF RECORDS**

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

#### **ARTICLE 12. AUDIT BY THE CITY AND OTHERS**

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

requirements and/or requests have not been satisfactorily met.

### **ARTICLE 13. INSURANCE**

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance as may be required by law. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Where applicable, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

- A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);
- B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;
- C. If the insurance is terminated for any reason, VENDOR agrees to purchase an

unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

### **ARTICLE 14. INDEMNIFICATION**

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

### **ARTICLE 15. PROTECTION OF CITY PROPERTY**

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

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

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

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

#### **ARTICLE 16. CONFIDENTIAL INFORMATION**

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDORS obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

#### **ARTICLE 17. TERMINATION**

The CITY may, by written notice to VENDOR effective thirty (30) days after mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt. The VENDOR may, by written notice to CITY effective thirty (30) days after mailing terminate this Agreement in whole or in part at any time (i) for VENDOR'S convenience, (ii) upon the failure of the

CITY to comply with any terms and conditions of this Agreement, or (iii) upon the City becoming insolvent or bankrupt.

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

A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event either party terminates this Agreement, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated,

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

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

#### **ARTICLE 18. GENERAL RELEASE**

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

the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

#### **ARTICLE 19. SET-OFF RIGHTS**

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

#### **ARTICLE 20. NO ARBITRATION**

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

#### **ARTICLE 21. GOVERNING LAW**

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

#### **ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES**

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

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

#### **ARTICLE 23. ENTIRE AGREEMENT**

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

#### **ARTICLE 24. MODIFICATION**

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the

Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

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

THE CITY OF NEWBURGH

VENDOR

BY: \_\_\_\_\_  
RICHARD F. HERBEK  
ACTING CITY MANAGER

BY: \_\_\_\_\_  
J. DWIGHT HADLEY  
TITLE: CPA

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
MICHELLE KELSON,  
Corporation Counsel

\_\_\_\_\_  
CHERYL A. GROSS,  
City Comptroller

SCHEDULE A

SCOPE OF SERVICES

## SCHEDULE B

### FEES AND EXPENSES

**RATE:** In consideration for the consulting services described in Schedule "A" above, the CITY shall pay the VENDOR at the rate of seventy (\$70.00) dollars per hour plus expenses, as outlined in the Budget for Financial Assistance attached hereto, payable within fourteen (14) days after invoices for such services rendered are received by the City.

**EXPENSES:** The CITY will reimburse the VENDOR for reasonable and necessary travel, meals, lodging and incidental expenses incurred in traveling to/from the City of Newburgh. Any request by the CITY to travel to other locations beyond the City's geographic boundaries shall be pre-approved in writing by the CITY. Written documentation and receipts itemizing by date incurred all amounts expended will be submitted for reimbursement within fourteen (14) days of receipt by City.

**RESOLUTION NO.: 137 - 2011**

**OF**

**JULY 11, 2011**

**RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW  
YORK TO TRANSFER \$20,100.00 FROM CONTINGENCY  
TO COMPTROLLER TO FUND CONSULTING  
SERVICES FOR J. DWIGHT HADLEY, CPA**

**BE IT RESOLVED**, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

		<u>Decrease</u>	<u>Increase</u>
Contingency	A.1900.1990	\$20,100.00	
Comptroller Consultant Services	A.1315.0455		\$20,100.00

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

**Ayes - Councilwoman Angelo, Councilman Dillard, Mayor Valentine-3**

**Nays - Councilwoman Bell, Councilwoman Bello - 2**

**ADOPTED**

**RESOLUTION NO.: 138 - 2011**

**OF**

**JULY 11, 2011**

**RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW  
YORK TO AUTHORIZE TAX REFUNDS FOR THE FISCAL YEARS 2009  
AND 2010 FOR A TAX CERTIORARI PROCEEDING INVOLVING  
PAUL & JOSEPH MANAGEMENT INC.**

**WHEREAS**, the City Council by Resolution No. 8-2011 of January 10, 2011 approved a Consent Judgment in connection with the Tax Certiorari Proceedings against the City of Newburgh involving Section 58, Block 1, Lots 1.48, 1.-7, 1.17, 1.-25, 1.-27 AND 1.-28 (PAUL & JOSEPH MANAGEMENT, INC.); and

**WHEREAS**, it is necessary to issue tax refunds for the fiscal years 2009 and 2010 due to the correction of assessment pursuant to the Consent Judgment;

**NOW, THEREFORE BE IT RESOLVED**, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

Fiscal Year 2009		Increase	Decrease
Refunds	A.1900.1965	\$512.94	
Contingency	A.1900.1990		\$512.94
Fiscal Year 2010			
Refunds	A.1900.1965	\$996.89	
Contingency	A.1900.1990		\$996.89

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

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

**ADOPTED**

ORDINANCE NO.: 17 - 2011

OF

JULY 11, 2011

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

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

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

§ 220-21	Launching boat or jet skis at Newburgh	
	Boat Launch	Daily Permit: \$ <u>15.00</u>
		Season Permit: <u>\$100.00</u>

**Section 2:** This Ordinance shall take effect immediately.

denotes deletions

Underlining denotes additions

Mayor Valentine said that they had recommended a daily permit of \$20.00 and season permit of \$175.00 and DEC came back and changed it to \$15.00 for a daily permit and \$100.00 for the season. We are still under DEC because of the improvements that were made to the Boat Launch so we have to get their approval.

Acting City Manager, Richard Herbek noted that the current fee was \$8.00 daily and this has been part of our ongoing efforts to increase revenue.

Councilwoman Bello asked for how long will we have to get approval from DEC?

**Michelle Kelson, Corporation Counsel said that it is a fairly substantial period of time but there is an ending date and she will let Councilwoman Bello know that date tomorrow.**

**Councilwoman Angelo asked if we know how much money this will bring in.**

**Acting City Manager, Richard Herbek said we are paying an attendant and it probably isn't a huge amount of revenue but we have been looking to increase whatever revenue options we can. It will not close the gap.**

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

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

**ADOPTED**

**RESOLUTION NO.: 139 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A LETTER AGREEMENT BETWEEN THE CITY OF  
NEWBURGH AND THE FIRM OF O'CONNOR, DAVIES, MUNNS &  
DOBBINS, FOR AUDITING SERVICES FOR FISCAL YEARS ENDING  
DECEMBER 31, 2011, 2012 AND 2013, FOR THE PRICE OF \$72,100.00;  
\$72,100.00 AND \$74,900.00 RESPECTIVELY**

**WHEREAS**, the firm of O'Connor, Davies, Munns & Dobbins has worked diligently in connection with the preparation of the City of Newburgh auditing for fiscal years ending December 31, 2008, 2009 and 2010; and

**WHEREAS**, based on experience and work history the City Comptroller has recommended that the firm of O'Connor, Davies, Munns & Dobbins be retained for fiscal years ending December 31, 2011, 2012 and 2013; and

**WHEREAS**, this Council has reviewed the letter agreement attached hereto and has determined it to be in the best interests of the City to enter into the same;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into a letter agreement with the firm of O'Connor, Davies, Munns & Dobbins for auditing services for the fiscal years ending December 31, 2011, 2012 and 2013 for the prices of \$72,100.00; \$72,100.00 and \$74,900.00 respectively.

**Mayor Valentine said that they had a question on what it cost last year.**

**Cheryl Gross, City Comptroller responded that it cost \$70,000.00**

**Councilwoman Bell asked how much did the predecessor get?**

**Acting City Manager, Richard Herbek said that the 2007 audit cost the City over \$200,000.00.**

**Councilwoman Bell asked why.**

Acting City Manager, Richard Herbek said that he wasn't here at that time but it was an audit that went on and on and was never brought to a close. It ended up being an unqualified audit and it did not give the City an accurate picture of the finances.

Mayor Valentine said that was the year that the Council decided that they wanted to go out and shop so we changed from the Auditor that we had used for eight or nine years. This group came in with the low bid and they just kept going on and billing us.

Councilwoman Bell said that probably has something to do with the books being so scrambled that they couldn't come to a conclusion.

Mayor Valentine said that in that case she is a little bit wrong. The Auditor at the time had several school systems and they were making more money on the school systems so they basically just put us on the back burner.

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

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

**ADOPTED**

139-11

June 14, 2011

Members of the City Council  
City of Newburgh  
City Hall  
83 Broadway  
Newburgh, New York 12550

Dear Members of the City Council:

We are pleased to confirm our understanding of the services we are to provide for the City of Newburgh for the years ended December 31, 2011, 2012 and 2013. We will audit the financial statements of the governmental activities, business-type activities, each major fund, and the aggregate remaining fund information, which collectively comprise the City's basic financial statements as of and for the years ended December 31, 2011, 2012 and 2013. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany the City's basic financial statements. As part of our engagement, we will apply certain limited procedures to the City's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis
- 2) Schedule of funding progress for other post-employment benefits

Supplementary information other than RSI also accompanies the City's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and will provide an opinion on it in relation to the basic financial statements:

- 1) Budgetary detail
- 2) Combining and individual fund financial statements and other schedules
- 3) Capital asset schedules
- 4) Schedule of expenditures of federal awards (if applicable)

139-11

The following additional information accompanying the basic financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and for which our auditor's report will disclaim an opinion:

- 1) Introductory section
- 2) Statistical section

### Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the financial statements taken as a whole. The objective also includes reporting on—

- Internal control related to the financial statements and compliance with the provisions of applicable laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards* (1).
  - Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* (1).
- (1) The City will be subject to an audit performed in accordance with *Government Auditing Standards* and OMB Circular A-133 provided that federal aid is at or exceeds \$500,000.

The reports on internal control and compliance will each include a statement that the report is intended for the information and use of the Mayor, City Council, management, specific legislative or regulatory bodies, federal and state awarding agencies, and if applicable, pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

With regard to using the auditor's report, you understand that you must obtain our prior written consent to reproduce or use our report in bond offering official statements or other documents. With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Our audit will be conducted in accordance with U.S. generally accepted auditing standards; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133 and will include tests of accounting

records, a determination of major program(s) in accordance with OMB Circular A-133 and other procedures we consider necessary to enable us to express such opinions and to render the required reports. If our opinion on the financial statements or the Single Audit compliance opinions are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

### **Management Responsibilities**

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. Management is also responsible for preparation of the schedule of expenditures of federal awards in accordance with the requirements of OMB Circular A-133. As part of the audit, we will review your preparation of the financial statements, schedules of expenditures of federal awards, and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements, schedules of expenditures of federal awards, and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter that you have reviewed and approved the financial statements, schedules of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any non-audit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance, and for monitoring ongoing activities, to help ensure that appropriate goals and objectives are met. You are also responsible for the selection and application of accounting principles; for the fair presentation in the financial statements of the respective financial position of the City and the respective changes in financial position and, where applicable, cash flows in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is also responsible for making all financial records and related information available to us and for ensuring that financial information is reliable and properly recorded. Your responsibilities also include identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants. Additionally, as required by OMB Circular A-133, if the City receives \$500,000 or more in Federal aid, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedules of prior audit findings should be available for our review.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

#### **Audit Procedures—General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports

required for the Single Audit Act. Our responsibility as an auditor is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

#### **Audit Procedures—Internal Controls**

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by OMB Circular A-133 if the City receives \$500,000 or more in Federal aid, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and OMB Circular A-133.

#### **Audit Procedures—Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion

on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

OMB Circular A-133, if applicable, require that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Circular A-133 Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. The purpose of these procedures will be to express an opinion on the City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to OMB Circular A-133.

#### **Audit Administration, Fees and Other**

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

We will provide copies of our reports to the City of Newburgh, New York; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of O'Connor Davies Munns & Dobbins, LLP and constitutes confidential information which protects the City from any non-authorized disclosure of City information by our staff. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to the cognizant or grantor agency or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of O'Connor Davies Munns & Dobbins, LLP personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of seven years after the report release date or for any additional period requested by the Cognizant Agency, Oversight Agency for Audit, or Pass-through Entity. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We will schedule our staff in accordance with parameters established by the Comptroller's Office. The preliminary phase will be conducted prior to the end of the fiscal year, generally in the latter part of November or early December.

Our fees for each of the next three years are detailed below:

	<u>2011 (1)</u>	<u>2012 (1)</u>	<u>2013 (1)</u>
Audit Fee	<u>\$ 72,100</u>	<u>\$ 72,100</u>	<u>\$ 74,900</u>

- (1) In recognition of the state of the economy and our long standing relationship with the City, we are keeping the fee for the audit of the City's December 31, 2011 and 2012 financial statements the same as the fee charged for the December 31, 2010 audit.

Our fees for these services are due and payable under the payment schedule which follows. Invoices for additional amounts that may be incurred for these and other services will be rendered as such work progresses and are payable upon presentation.

<u>Payments will be due</u>	<u>Percentage</u>
Upon completion of our audit field work	75%
Upon submission of the draft report and management letter	<u>25%</u>
	<u>100%</u>

The fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

As you may know, it is typical for us to assign staff and schedule their time for a client engagement well in advance of the actual performance of the services. This advanced scheduling allows us to ensure that staff is available to accommodate the technical requirements of the engagement; any preferences you may have as to the professionals assigned and that all your deadlines can be met. From time to time we may be required to cancel and/or reschedule the on-site services due to your inability to provide the documentation and schedules required prior to our beginning our work or a change in the availability of your staff or simply at your request. Without proper notification of such required rescheduling, it is typical for us to incur additional fees not originally planned with the scope of our engagement and within the related fees quoted in this letter.

You may request that we perform additional services not addressed in this engagement letter. If this occurs, we will communicate with you regarding the scope of the additional services and the estimated fees. We also may issue a separate engagement letter covering the additional services. In the absence of any other written communication from us documenting such additional services, our services will continue to be governed by the terms of this engagement letter.

We appreciate the opportunity to continue to be of service to the City of Newburgh, New York and believe this letter accurately summarizes the significant terms of our engagement. The availability of our Firm as a total resource to the City will continue to be our primary objective. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us. This letter will continue in effect until cancelled by either party.

Very truly yours,

*O'Connor Davies Munns & Dobbins, LLP*

O'Connor Davies Munns & Dobbins, LLP

*Response:*

This letter correctly sets forth the understanding of the City of Newburgh, New York for the years ended December 31, 2011, 2012 and 2013.

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

**RESOLUTION NO.: 140 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR  
AND ACCEPT IF AWARDED A GRANT FROM THE UNITED STATES  
DEPARTMENT OF JUSTICE FOR THE PROJECT SAFE NEIGHBORHOOD  
(PSN) 2011 PROGRAM  
FOR A TOTAL GRANT AMOUNT OF \$35,000.00  
WITH NO CITY MATCH REQUIRED**

**WHEREAS**, the United States Department of Justice has offered a grant under its Project Safe Neighborhood (PSN) 2010 Program to provide funds to implement additional police enforcement to target street level activity during days and times of highest frequency of violent crime, firearm related activity and gang activity and support the use of rental vehicles to be used for surveillance and investigative purposes; and

**WHEREAS**, the City of Newburgh Police Department wishes to apply for \$35,000.00 from the 2011 Project Safe Neighborhood Program for the City of Newburgh to be used as follows:

\$19,000.00 - Overtime  
\$12,000.00 - Vehicle Rentals

**WHEREAS**, no City match of dollars or in-kind services is required; and

**WHEREAS**, this Council has determined that such grant is in the best interests of the City of Newburgh and its residents;

**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 apply for and accept if awarded a grant from the United States Department of Justice for the Project Safe Neighborhood (PSN) 2011 Program for a total grant amount of \$35,000.00 with no City match required.

**Councilwoman Angelo asked if we receive the grant who administers it.**

**Mayor Valentine said that it would be the Police Department.**

**Councilwoman Bello asked what exactly would the program look like.**

**Cheryl Gross, City Comptroller said that it would be for community policing and undercover work.**

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

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

**ADOPTED**

**RESOLUTION NO.: 141 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO APPLY FOR, ACCEPT IF AWARDED AND  
ENTER INTO AN INTER-MUNICIPAL AGREEMENT BETWEEN  
THE COUNTY OF ORANGE AND THE CITY OF NEWBURGH IN  
CONNECTION WITH THE 2011 BYRNE MEMORIAL JUSTICE ASSISTANCE  
GRANT PROGRAM**

**WHEREAS**, the Justice Assistance Grant (“JAG”) Program provides funds for various law enforcement agencies throughout the State of New York; and

**WHEREAS**, the City of Newburgh joined the County of Orange and other local law enforcement agencies in applying for the 2011 Byrne Memorial JAG, which provides funds for various important law enforcement functions as provided by the terms of the award including but not limited to street surveillance cameras, undercover vehicle availability, unmarked patrol vehicles, acquisition of an evidence management system, upgrade to the Live Scan fingerprinting system and related database compilation and access, technology and equipment, record-keeping, training and the enhancement of other important police functions; and

**WHEREAS**, the City of Newburgh Police Department wishes to apply for \$24,112.00 from the 2011 Local JAG Award for the City of Newburgh to be used as follows:

\$12,056.00 for Mobile Data Terminals for Patrol Cars;  
\$12,056 for video equipment for booking room; and

**WHEREAS**, no City match of dollars or in-kind services is required; and

**WHEREAS**, this Council has determined that such grant is in the best interests of the City of Newburgh and its residents;

**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 apply for, accept if awarded and enter into an inter-municipal agreement between the County of Orange and the City of Newburgh in connection with the 2011 Byrne Memorial JAG Program Award to receive funds through the County of Orange under the terms of said program and under the terms and conditions of the agreement, in a form subject to

approval of the Corporation Counsel, for various important law enforcement functions for the City of Newburgh and other local law enforcement agencies.

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

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

**ADOPTED**

**RESOLUTION NO.: 142-2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH DECLARING ITS INTENT TO BE LEAD AGENCY UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) WITH RESPECT TO THE AMENDMENT OF THE SUSTAINABLE MASTER PLAN BY THE ADOPTION OF THE FUTURE LAND USE PLAN OF THE CITY OF NEWBURGH, DECLARING THE PROJECT TO BE A TYPE I ACTION, CONSIDERING AN ENVIRONMENTAL ASSESSMENT FORM (EAF), REFERRING SAME TO THE ORANGE COUNTY PLANNING BOARD AS REQUIRED BY SECTION 239 OF THE GENERAL MUNICIPAL LAWS AND COMMENCING A 30-DAY PUBLIC COMMENT PERIOD**

WHEREAS, the City of Newburgh is proposing to adopt a Future Land Use Plan as an amendment to the City's Sustainable Master Plan pursuant to Section 28-a of the New York State General City Law; and

WHEREAS, the City of Newburgh proposes to undertake the adoption of the Future Land Use Plan in compliance with the terms of State law and does hereby wish to review the project in accordance with the State Environmental Quality Review Act (SEQRA); and

WHEREAS, in compliance with SEQRA, the City Council of the City of Newburgh wishes to declare its intent to assume Lead Agency status, classify the project as a Type I action, proposes accept as complete an Environmental Assessment Form ("EAF"), refer the proposed Future Land Use Plan to the City of Newburgh Planning Board and the Orange County Planning Department pursuant to General Municipal Law Section 239-m and General City Law Section 28-a, and commence a 30-day public comment period.

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

1. That the City Council of the City of Newburgh hereby declares its intent to assume Lead Agency status for the environmental review of the action pursuant to 6 NYCRR 617-.6; and
2. Classifies the action as a Type I Action; and

3. Proposes to accept as complete the Environmental Assessment form ("EAF") attached hereto;
4. Refers the proposed Future Land use Plan to the City of Newburgh Planning Board and to the Orange County Planning Department as required by General Municipal Law Section 239-m and General City Law Section 28-a; and
5. Opens a 30-day public comment period.

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

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

**ADOPTED**

**RESOLUTION NO: 143 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO APPLY FOR AND ACCEPT IF AWARDED MONIES  
FROM THE NEW YORK STATE DEPARTMENT OF EDUCATION  
FOR THE 21<sup>ST</sup> CENTURY COMMUNITY LEARNING CENTERS GRANT  
AND AUTHORIZING ANY AND ALL EXPENDITURES NECESSARY TO  
FUND THE PROGRAM THROUGHOUT ITS ENTIRETY THROUGH  
VENDOR CONTRACTS AND OTHER PROGRAM RELATED COSTS  
AS PER THE STATE APPROVED BUDGET  
IN AN AMOUNT NOT TO EXCEED \$899,000.00**

**WHEREAS**, under the Federal 21<sup>st</sup> Century Community Learning Centers Program, a key component of the Federal *No Child Left Behind Act*, funds are available to community collaboratives to provide expanded academic enrichment opportunities for children attending low performing schools; and

**WHEREAS**, the legislation's specific purposes are to: (1) provide opportunities for academic enrichment, including providing tutorial services to help students (particularly students in high-poverty areas and those who attend low-performing schools) meet State and local student performance standards in core academic subjects such as reading and mathematics; (2) offer students a broad array of additional services, programs, and activities, such as youth development activities, drug and violence prevention programs, counseling programs, art, music, and recreation programs, technology education programs, and character education programs, that are designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related educational development; and

**WHEREAS**, the City of Newburgh wishes to apply for and accept if awarded a grant under the Federal 21<sup>st</sup> Century Community Learning Centers Program in an amount not to exceed \$899,000.00 for the period of July 1, 2011 through June 30, 2012; and

**WHEREAS**, this Council has determined that making such application and accepting if awarded is in the best interests of the City of Newburgh and its residents;

**NOW THEREFORE BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager is hereby authorized to apply for and accept if awarded the 21<sup>st</sup> Century Community Learning Centers grant in an amount not to exceed \$889,000.00 to support and expand, in collaboration with our valued community partners, quality afterschool services for children and youth in the City of Newburgh; and is authorized to execute such contracts with providers as will enable such programs to be carried out in keeping with the budget for same as approved by New York State.

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

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

**ADOPTED**

143-11

SUPPLIES AND MATERIALS			
Subtotal - Code 45			\$4,000
Description of Item	Quantity	Unit Cost	Proposed Expenditure
Promotional (various Items)			\$4,000

The University of the State of New York  
THE STATE EDUCATION DEPARTMENT

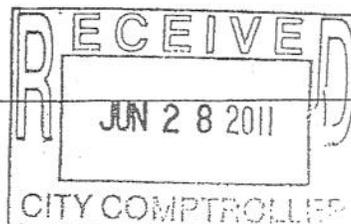
PROPOSED BUDGET FOR A  
FEDERAL OR STATE PROJECT  
FS-10 (01/10)

= Required Field

Local Agency Information		
Funding Source:	21st Century Community Learning Centers-NCL	
Report Prepared By:	Joy Pittman	
Agency Name:	City of Newburgh	
Mailing Address:	83 Broadway	
	Street	
	Newburgh	NY 12550
	City	State Zip Code
Telephone # of Report Preparer:	845-565-1213ext.7016	County: Orange
E-mail Address:	jpittman@cityofnewburgh-ny.gov	
Project Funding Dates:	7/1/2011 Start	6/30/2012 End

**INSTRUCTIONS**

- Submit the original FS-10 Budget and the required number of copies along with the completed application directly to the appropriate State Education Department office as indicated in the application instructions for the grant program for which you are applying. DO NOT submit this form to Grants Finance.
- The Chief Administrator's Certification on the Budget Summary worksheet must be signed by the agency's Chief Administrative Officer or properly authorized designee.
- An approved copy of the FS-10 Budget will be returned to the contact person noted above. A window envelope will be used; please make sure that the contact information is accurate and confined to the address field without altering the formatting.
- For information on budgeting refer to the Fiscal Guidelines for Federal and State Aided Grants at <http://www.oms.nysed.gov/cafe/guidance/>.



SALARIES FOR PROFESSIONAL STAFF			
Subtotal - Code 15			\$176,434
Specific Position Title	Full-Time Equivalent	Annualized Rate of Pay	Project Salary
Project Director	0.75	\$50,628	\$50,628
Afterschool Coordinator Elementary	1 FTE	\$33,181	\$33,181
Afterschool Coordinator Middle	1 FTE	\$29,606	\$29,606
Afterschool Coordinator High	0.75	\$27,135	\$27,135
Data Entry Specialist	1 FTE	\$35,884	\$35,884

SALARIES FOR SUPPORT STAFF			
Subtotal - Code 16			\$59,560
Specific Position Title	Full-Time Equivalent	Annualized Rate of Pay	Project Salary
3 Group Leaders	20hrs wk/p/t	\$18HR	\$34,560
Program Assistant	25hrs wk/pt	\$25HR	\$25,000

PURCHASED SERVICES			
Subtotal - Code 40			\$523,938
Description of Item	Provider of Services	Calculation of Cost	Proposed Expenditure
Teachers (16)	Newburgh Enlarged School District	16 x23.865x2x129	\$98,515
Administrators (3)	Newburgh Enlarged School District	3X51.60X5X129	\$99,846
Nurses (2)	Newburgh Enlarged School District	2X35.821x5X129	\$46,209
Security (4)	Newburgh Enlarged School District	3X19.35X4hrx129	\$29,984
Support Staff	Newburgh Enlarged School District		\$10,320
Supplies	Newburgh Enlarged School District		\$3,200
Transportation (8)	Newburgh Enlarged School District		\$90,300
FICA	Newburgh Enlarged School District		\$17,425
WC	Newburgh Enlarged School District		\$4,311
TR	Newburgh Enlarged School District		\$22,818
ER	Newburgh Enlarged School District		\$6,192
Program Evaluation	Olson Associates	\$750x12	\$11,231
Arts&Cultural/Healthy Lifestyles&recreation	TBA( various)	\$35x 3 hrsx5x150	\$64,037
Family Literacy	TBA( various)	\$175X30wks	\$5,250

Technology Specialist	TBA( various)	\$35HRX2X5X15	\$5,300
Youth Development	TBA( various)	\$35HRX2X5X30	\$9,000

TRAVEL EXPENSES			
Subtotal - Code 46			\$13,200
Position of Traveler	Destination and Purpose	Calculation of Cost	Proposed Expenditures
Project Director	Professional Development		\$1,200
Site Coordinator/Group Leader	Professional Development		\$2,000
Participants	Field Trips/College Tour		\$10,000

Employee Benefits		
Subtotal - Code 80		
\$106,506		
Benefit	Proposed Expenditure	
Social Security	\$18,600	
Retirement	New York State Teachers	
	New York State Employees	\$26,089
	Other - Pension	
Health Insurance	\$58,608	
Worker's Compensation	\$3,209	
Unemployment Insurance		
<b>Other(Identify)</b>		

INDIRECT COST		
A.	Modified Direct Cost Base -- Sum of all preceding subtotals (codes 15, 16, 40, 45, 46, and 80 and excludes the portion of each subcontract exceeding \$25,000 and any flow through funds) **Manual Entry	\$568,951
B.	Approved Restricted Indirect Cost Rate	2.70%
C.	Subtotal - Code 90	\$15,362

For your information, maximum direct cost base = \$883,638.00

To calculate Modified Direct Cost Base, reduce maximum direct cost base by the portion of each subcontract exceeding \$25,000 and any flow through funds.

PURCHASED SERVICES WITH BOCES			
			Subtotal - Code 49
Description of Services	Name of BOCES	Calculation of Cost	Proposed Expenditure

MINOR REMODELING		
		Subtotal - Code 30
Description of Work to be Performed	Calculation of Cost	Proposed Expenditure

EQUIPMENT			
Subtotal - Code 20			
Description of Item	Quantity	Unit Cost	Proposed Expenditure

**BUDGET SUMMARY**

SUBTOTAL	CODE	PROJECT COSTS
Professional Salaries	15	\$176,434
Support Staff Salaries	16	\$59,560
Purchased Services	40	\$523,938
Supplies and Materials	45	\$4,000
Travel Expenses	46	\$13,200
Employee Benefits	80	\$106,506
Indirect Cost	90	\$15,362
BOCES Services	49	
Minor Remodeling	30	
Equipment	20	
Grand Total		\$899,000

Agency Code:

Project #:

Contract #:

Agency Name:

**FOR DEPARTMENT USE ONLY**

Funding Dates: \_\_\_\_\_ From \_\_\_\_\_ To \_\_\_\_\_

Program Approval: \_\_\_\_\_ Date: \_\_\_\_\_

<u>Fiscal Year</u>	<u>First Payment</u>	<u>Line #</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Voucher # \_\_\_\_\_ First Payment \_\_\_\_\_

**CHIEF ADMINISTRATOR'S CERTIFICATION**  
*I hereby certify that the requested budget amounts are necessary for the implementation of this project and that this agency is in compliance with applicable Federal and State laws and regulations.*

6/28/11   
 Date Signature

  
 Name and Title of Chief Administrative Officer

Finance: Logged \_\_\_\_\_ Approved \_\_\_\_\_ MIR \_\_\_\_\_

**RESOLUTION NO.: 144 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION AUTHORIZING 90 DAY EXTENSION OF TIME TO  
REHABILITATE PREMISES OWNED BY PRESENTATION EDUCATIONAL  
FOUNDATION, INC. KNOWN AS 72 BAY VIEW TERRACE  
N/K/A 69 BAY VIEW TERRACE (SECTION 48, BLOCK 7, LOT 2)  
IN THE CITY OF NEWBURGH**

**WHEREAS**, the City of Newburgh did convey the premises located at 72 Bay View Terrace, more accurately described as Section 48, Block 7, Lot 2 on the official Tax Map of the City of Newburgh by deed dated December 18, 2006; and

**WHEREAS**, said deed included a provision requiring rehabilitation of the conveyed premises to be completed on or about June 18, 2008; and

**WHEREAS**, Presentation Educational Foundation, Inc., the owner of property located at 72 Bay View Terrace in the City of Newburgh has been unable to comply with the deadline, but has made substantial progress to rehabilitate 72 Bay View Terrace for use as the Nora Cronin Presentation Academy, a middle school for girls in grades 5 through 8 from low-income families in the City of Newburgh, which establishes a good faith effort and intent to complete the project; and

**WHEREAS**, by Resolution No.: 120-2008 of July 21, 2008, the Council of the City of Newburgh, New York authorized a one (1) year extension of time to rehabilitate said premises; and

**WHEREAS**, by Resolution No.: 95-2009 of June 15, 2009, the City Council of the City of Newburgh, New York authorized a one (1) year extension of time to rehabilitate said premises; and

**WHEREAS**, by Resolution No.: 130-2010 of June 14, 2010, the City Council of the City of Newburgh, New York authorized a one (1) year extension of time to rehabilitate said premises; and

**WHEREAS**, Presentation Educational Foundation, Inc, despite their diligent efforts to complete the rehabilitation of the premises, has been unable to

comply with the deadline, and has made a good faith effort and intends to complete the rehabilitation, and has requested a further extension of time to complete said rehabilitation; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that a ninety (90) day extension to rehabilitate the premises known as 72 Bay View Terrace n/k/a 69 Bay View Terrace in the City of Newburgh is hereby granted to Presentation Educational Foundation, Inc.; and

**BE IT FURTHER RESOLVED**; that such rehabilitation must be completed on or before October 19, 2011, from the date previously authorized by Resolution No.: 130-2010 of June 14, 2010.

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

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

**ADOPTED**

**LOCAL LAW NO.: 5 - 2011**

**OF**

**JULY 11, 2011**

**A LOCAL LAW AMENDING LOCAL LAW NO.: 6-2007  
OF NOVEMBER 26, 2007, WHICH AMENDED THE  
INCOME LEVELS AND THE EXEMPTION TERM OF CHAPTER 270  
"TAXATION" ARTICLE V "EXEMPTION FOR FIRST-TIME HOMEBUYERS  
OF NEWLY CONSTRUCTED HOMES"  
OF THE CODE OF THE CITY OF NEWBURGH**

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

**SECTION 1 - TITLE**

This Local Law shall be referred to as "A Local Law Amending Local Law No.: 6-2007 of November 26, 2007" which amended the Income Levels and the Exemption Term of Chapter 270 'Taxation', Article V 'Exemption for First-Time Homebuyers of Newly Constructed Homes' of the Code of the City of Newburgh".

**SECTION 2 - PURPOSE AND INTENT**

The purpose of this local law is to amend the Code of the City of Newburgh to afford first- time homebuyers of newly constructed homes a partial exemption from real property taxes levied by the City as permitted under New York State Real Property Tax Law Section 457 as same has been amended by the New York State Legislature and to lengthen the exemption term as allowed by law.

**SECTION 3 - AMENDMENT**

Chapter 270 entitled "Taxation" of the Code of the City of Newburgh is hereby amended by the following amendment to Article V entitled "Exemption for First-Time Homebuyers of Newly Constructed Homes" which is now to read as follows:

§ 270-26. Purpose.

The purpose of this article is to provide partial exemption from taxation and special ad valorem levies for owner-occupied, primary residential property that is newly constructed or reconstructed under certain conditions set forth below.

§ 270-27. Definitions.

As used in this article, the following terms, phrases, words and their derivations shall have the following meanings:

FIRST-TIME HOMEBUYER -- An individual or individuals who have not owned, and are not married to a person who has owned, a primary residential property during the three-year period prior to their purchase of the primary residential property for which this exemption is sought, and do not own a vacation or investment home.

INCOME -- The adjusted gross income for federal income tax purposes as reported on the applicant's latest available federal or state income tax return, subject to any subsequent amendments or revisions, reduced by distributions, to the extent included in federal adjusted gross income, received from an individual retirement account or an individual retirement annuity; provided that if no such return was filed within the one-year period preceding taxable status date, "income" means the adjusted gross income that would have been so reported if such a return had been filed.

LATEST AVAILABLE RETURN -- The federal or state income tax return for the tax year immediately preceding the date of making application for the exemption; provided however, that if the tax return for such year has not been filed, then the income tax return for the tax year two years preceding the date of making application will be considered the latest available return.

NEWLY CONSTRUCTED -- An improvement to real property which was constructed as a one- or two-family house, townhouse or condominium, which has never been occupied and was constructed after November 28, 2001, but on or before December 31, 2016. "Newly constructed" shall also mean that portion of a one- or two-family house, townhouse or condominium that is altered, improved or reconstructed.

PRIMARY RESIDENTIAL PROPERTY -- Any one- or two-family house, townhouse, or condominium located in this state which is owner-occupied by such homeowner.

§ 270-28. Ownership eligibility requirements.

The following ownership eligibility requirements must be met in order to qualify for the first-time homebuyer exemption:

A. The property must be owned by a first-time homebuyer or homebuyers and used as their primary residence. If title to the property is transferred to someone other than the heirs or distributees of the homebuyer(s) during the term of the exemption, the exemption will be discontinued.

B. The combined income of all the owners, and of any of the owners' spouses residing on the property, for the income tax year immediately preceding the date of application for exemption may not exceed \$81,830.00.

§ 270-29. Property use requirements.

The following property use requirements must be met in order to qualify for the first-time homebuyer exemption:

A. The property must be a newly constructed or reconstructed one- or two-family house, townhouse or condominium that is owner-occupied.

B. Other than for reconstruction projects, the home must never have been occupied previously.

C. No portion of an otherwise eligible single-family home may be leased for any purpose, or used primarily for nonresidential purposes, during the time the exemption applies. In either case, the exemption shall be discontinued.

§ 270-30. Sales price and exemption limits.

The maximum sales price of an eligible newly constructed residence must not exceed \$399,370.00 to qualify for exemption. Newly constructed residences purchased by first-time homebuyers at a sales price greater than the maximum eligible sales price shall qualify for exemption for that portion of the sales price equal to the maximum eligible sales price; provided, however, that any newly constructed residence purchased at a sales price greater than \$459,275.00 shall not be allowed any exemption.

§ 270-31. Reconstruction exemption.

The exemption for reconstructed, altered or improved residential property is limited solely to the increase in assessed value attributable to such reconstruction, alteration or improvement, provided that the total market value of the property after the project completion does not exceed \$459,275.00. To be eligible for this exemption on existing homes, the first-time homebuyer must have provided for such reconstruction, alteration or improvement as part of the sale contract of the home or entered into a written contract for such work within

90 days of the purchase of the property. The value of such reconstruction, alteration or improvement must be greater than \$3,000.00 and cannot include the value of ordinary maintenance and repairs.

§ 270-32. Required construction start date and other time requirements.

Property must be constructed or reconstructed by a first-time homebuyer on or before December 31, 2016, unless such purchase is made pursuant to a binding written contract entered into on or before such date, and after November 28, 2001. First-time homebuyers who first received this exemption prior to December 31, 2016, will continue to receive the exemption according to the established schedule below. First-time homebuyers of existing homes seeking the exemption on the basis of reconstruction, alteration or improvement of the property must either have provided for such work in their purchase contract or enter into a written contract for such work within 90 days after the purchase of the home.

§ 270-33. Calculation of exemption.

A. City of Newburgh taxes and special ad valorem levies. The following is the exemption schedule:

Years of Exemption	Percentage of Assessed Valuation Exempt From Taxation
1	50%
2	40%
3	30%
4	20%
5	10%
6 or more	0%

B. City of Newburgh special assessments. No exemption allowed.

§ 270-34. Applications for exemption.

Such exemption shall be granted only upon application by the owner on a form prescribed by the State Board of the Office of Real Property Services to the City of Newburgh Assessor, submitted on or before the appropriate taxable status date and approval of such application by the Assessor.

**SECTION 4 - VALIDITY**

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

**SECTION 5 - EFFECTIVE DATE**

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

**SECTION 6 - FILING**

In addition to the Office of the New York State Secretary of State, copies of this Local Law shall be filed with the State Board of the Office of Real Property Services and the City of Newburgh Assessor.

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

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

**ADOPTED**

**RESOLUTION NO.: 146 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AND EXECUTE AN AGREEMENT WITH  
THE NEWBURGH ARMORY UNITY CENTER, INC.**

**WHEREAS**, this Council, by Resolution No.: 16-2010 of January 11, 2010 and 99-2010 of April 26, 2010, authorized the City Manager to apply to the State of New York Office of General Services for transfer and conveyance of State land known as the New York State Armory located at 321 South William Street in the City of Newburgh ("Armory property") and to execute any and all documents in connection with the transfer and conveyance of such Armory Property; and

**WHEREAS**, the original Letters Patent conveying title to the Armory property to the City of Newburgh was recorded in the office of the Orange County Clerk on August 20, 2010 in Liber 13044 of Deeds at Page 1443; and

**WHEREAS**, the City of Newburgh has determined that it does not have sufficient personnel and other resources to manage, operate, and raise funds for the Armory; and

**WHEREAS**, the City Council after following due diligence, has determined that the Newburgh Armory Unity Center, Inc. ("NAUC") is the most capable entity to provide such management, operation, and fundraising services for the City of Newburgh and has proposed the annexed Agreement for providing such services to the City; and

**WHEREAS**, this Council has reviewed the annexed agreement and finds that the execution of such agreement is in the best interests of the City of Newburgh, and its citizens;

**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 the Newburgh Armory Unity Center, Inc., in substantially the same form as annexed hereto and subject to such other terms and conditions as may be required by Corporation Counsel.

Councilwoman Bello said that they were just handed this contract on Thursday night and the final draft came today so she hasn't had a chance to review it. This is a twenty-five year term that will encumber the next twelve Councils so she would like to make a motion to table.

Councilwoman Bello moved to table but there was no second.

Councilwoman Bello continued that she doesn't understand locking us in for a twenty-five year term. She was just handed this final draft tonight. As long as it conforms to the mission, we should never be denied the right to use that. She wants stronger language that city residents would be considered first in hiring. She hasn't even been able to read the contract that was just handed to her tonight which is for twenty-five years.

Michelle Kelson, Corporation Counsel said that what the Council received tonight is just a clean version of what was received earlier. As far as the preference to city residents, you have to have some sensitivity to hiring laws and discrimination provisions. She doesn't think that it is their intention to deny the City as they are only asking that they get advanced notice. In order to get the fundraising that is needed to make the necessary repairs and to get the big money through these programs, they need to know that the city is supporting this organization as its manager. If there is a fear that the city is going to change the agreement next year or the year after, then no one is going to commit to that kind of funding. This agreement was worked on by former Corporation Counsel, Bernis Nelson, who put in a lot of hard work and fought for a lot of the terms that are in there. It is a license agreement and does not give Unity Group any property interest in the facility or the land and it is has to be consistent with the mission. She feels that this does all of those things.

Councilwoman Bello said that all she was asking for was that she thinks it is that important. Ten minutes at a Work Session to go over it doesn't seem like enough to her especially when it is going to limit choices. Nobody at this table can predict the future but we can sure document the mistakes of the past. She thinks that we should take a little more time to go over this. It's for twenty-five years and the next twelve Councils will be encumbered by this contract.

Councilwoman Bell said that she would like to speak in favor of this agreement. She remembers when New York State approached them about buying the Armory for \$1.00 and at that particular time we didn't have a \$1.00. We made a decision that we would accept it for \$1.00 and then we would try figure out a method and means to make the improvements necessary. She remembers when Bill Kaplan came here and they all went to the Armory. They brought together all of the major organizations and people who know

business and then they got one of the most humanitarian individuals in the entire City of Newburgh, Dierdre Glenn, from Habitat. The reason they did this was so that we would be able to offer our youth a chance to get away from all of the negativism that is around them in the City. She doesn't know who has visited the Armory so far but there are kids there each and every day including Saturdays and Sundays using that facility. She knows that they have plans for the drill hall in terms of a way to regularly make money and she knows that the total cost is estimated to be about two million dollars. They are willing to take this on and do all of the work that is necessary for our kids and for our community and then say to us that if there is money left over, they will return that back to the City. If that is not a win, win, win, she doesn't know what is. She doesn't think that to be small about it is going to serve us well. She absolutely is in support of the Unity Project and she thanks them for taking the initiative in helping out our community.

Councilwoman Bello said that her comments were in no way to diminish the merit of the mission of the Unity Center. What she is saying is that we don't work for the Unity Center. We work for the people of this City.

Councilwoman Bell said that they are working for us and our people. They are not doing this for their own personal gain.

Councilwoman Bello said that we just got this and she bets that not one of them could tell her all of the items in there and the effect that it is going to have on the City but they are ready to vote on it. All she asked was to table it so that they could have a little more discussion and make sure that the city and the residents are protected. That's all.

Mayor Valentine said that the City Manager and the Comptroller sit on their Board. At every one of their meetings there are two representatives from the City of Newburgh that attend. If there is something coming up at the next Board meeting you will have enough advance notice to say that the City of Newburgh would like to use it on such and such a date. The determination of them to succeed is based on whether or not there is a long term commitment of a partnership. This is a license agreement not a contract of sale or a contract for services. It is an agreement with an entity that comprises Newburgh. These are not strangers. Both Colleges, the Hospital and community groups all have people on this that care about what is going on with programs. This can change over a period of twenty-five years but the mission is the mission and the mission is in here. Whether it is the current City Council or the City Manager or the CEO of the Hospital, there will always be somebody there to represent so there is no break in the vision. Why tonight? Because this has been worked on for six months and their trust is in the people who put this together. In this particular case there are people who are looking after the best

interest of the City from both sides. There is a point where you say this is the time to vote on something and there will always be second thoughts. All in all it is a good document that gets them to a point where they can go out there because there are people chomping at the bit to start work at the Armory but they won't do it without an agreement. They won't make that long range commitment unless there is an agreement which is where we are at.

Councilwoman Angelo asked Deirdre Glenn who will make the decision of who will come into the Armory. Will it be the Board or do they have a committee?

Deirdre Glenn said that for the athletic groups there are all not-for-profits on the athletic committee and the Board working together. Obviously they take the City first with the Day Camp operating there right now and the upcoming Festival. Changing the purpose of the mission can only be done by the City Council and as the Mayor just said the City Manager sits on the Board of Directors and will be very active in participating in all decisions.

Councilwoman Bell moved and Councilwoman Bello seconded to adopt the resolution.

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

Nays - Councilwoman Bello - 1

**ADOPTED**

**MANAGEMENT AGREEMENT**

**between**

**THE CITY OF NEWBURGH, NEW YORK**

**and**

**NEWBURGH ARMORY UNITY CENTER, INC.**

**Dated: July \_\_\_\_\_, 2011**

## MANAGEMENT AGREEMENT

This Management Agreement (the “**Agreement**”) is made as of the \_\_\_ day of July, 2011 (“**Effective Date**”), by and between the City of Newburgh, New York, a New York municipal corporation (“**City**”), and Newburgh Armory Unity Center, Inc., a New York not-for-profit corporation (“**Manager**”).

### RECITALS

**WHEREAS**, on July 6, 2010 the State of New York granted a letter patent to the City (the “Letter Patent”) for the building now known as the Newburgh Armory located at 321-393 S. William St., Newburgh, New York, consisting of an approximately 60,000 square feet and 12 acres of property, which currently contains a basketball court and other space the use of which is yet to be determined (the “Facility”); and

**WHEREAS**, Manager has as its not-for-profit mission and purpose to benefit the citizens of the City, and the surrounding communities, by providing recreational opportunities to disadvantaged youth, and organizing, hosting or promoting community events in the City;

**WHEREAS**, the Board of Directors of Manager is comprised of certain individuals, serving *ex officio*, by virtue of their holding of officer or director positions with one or more of the following entities: Kaplan Family Foundations, Orange County Community College, the Newburgh Enlarged City School District Board of Education and Mount St. Mary College, which Directors shall select additional Directors who have a proven record of service and commitment to the City;

**WHEREAS**, by virtue of its purposes and composition, Manager is both well suited and able to provide the experience necessary to administer, promote, plan, manage and operate the Facility;

**WHEREAS**, the City wishes to engage Manager to operate and market the Facility and to determine the uses for and events held at the Facility; and reduce or eliminate the annual operating subsidy of the Facility by the City; and

**WHEREAS**, the City desires to engage Manager to manage and operate the Facility on behalf and for the benefit of the City, and Manager desires to accept such engagement, in fulfillment of its stated not-for-profit mission and purpose, pursuant to the terms and conditions contained herein; and

**NOW THEREFORE**, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

## **ARTICLE 1 DEFINITION**

Section 1.1. Definitions. For purposes of this Agreement, the following terms have the meanings referred to in this Section:

**Capital Expenditures:** All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$5,000 and the depreciable life of the applicable item is, according to generally accepted accounting principles, is in excess of five (5) years.

**Emergency Repair:** The repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facility threatening persons or property.

**Event of Force Majeure:** An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

**Facility:** The “Facility” shall have the meaning ascribed to such term in the Recitals to this Agreement, and shall be deemed to include the entire Armory complex, including but not limited to the entire square footage of the Armory building, and the entrances, grounds, sidewalks and parking areas immediately surrounding the Facility and adjacent thereto.

**General Manager:** The employee of Manager acting as the full-time on-site general manager of the Facility.

**Laws:** Federal, state, local and municipal laws, statutes, rules, regulations and ordinances.

**Operating Account:** A separate interest-bearing account in the name of the Manager and under the Manager’s Federal ID number, where Revenues are deposited and from which Operating Expenses are paid.

**Operating Budget:** A line item budget for the Facility that includes a projection of Revenues and Operating Expenses.

**Operating Expenses:** All expenses incurred by Manager in connection with its operation, promotion, maintenance and management of the Facility.

**Operating Year:** The first Operating Year shall be the period commencing on the Effective Date and ending on December 31, 2011. Each successive Operating Year shall be the twelve (12) month period commencing on January 1 of each year beginning with January 1, 2012.

**Operations Manual:** Document to be developed by Manager which shall contain terms regarding the management and operation of the Facility, including detailed policies and procedures to be implemented in operating the Facility.

**Revenues:** All monies received by Manager from services provided and programs operated at the Facility, without deduction or set-off of any kind. Revenues shall also include funds received from fundraising and federal, state and local governmental agencies or officials for programs and services rendered at the Facility for which Facility receives the monies. Revenue shall also include income from rental and sublicense or subcontracting fees received in connection with services provided by Manager at the Facility.

**Service Contracts:** Agreements for services to be provided in connection with the operation of the Facility, which are deemed by Manager to be either necessary or useful in operating the Facility.

**Taxes:** Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the City at the Facility, or (ii) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility.

## **ARTICLE 2 SCOPE OF SERVICES**

### Section 2.1 Engagement.

(a) City hereby engages Manager as an independent contractor to exclusively perform the services described in **Exhibit A** attached hereto, except that in operating the Facility and maintaining it in accordance with this Agreement, Manager acts on behalf of and as agent for the City, with the fiduciary responsibilities required of one acting in such capacity.

(b) Manager hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement and in the Operations Manual. The Manager has delivered to the City a template for the Operations Manual and shall, within ninety (90) days following the Effective Date,

modify such template specifically to apply to the Facility. Upon issuance of the final Operations Manual by Manager, it and any revisions prepared and approved pursuant to the terms of this Agreement shall be deemed part of this Agreement and incorporated herein by reference.

Section 2.2 Management Services. Consistent with the Operating Budget, Manager agrees to perform and furnish management services, systems and materials needed to operate, supervise, manage and maintain the Facility in the most efficient manner consistent with the operation of other similar facilities. The Manager shall have discretion and control, free from interference, interruption, or disturbance in all matters relating to the operation and management of the Facility. The Manager is delegated authority by the City pursuant to the terms of this Agreement over the operation of the Facility, and all activities therein. The Manager's duties and obligations under this Agreement shall include, but not be limited to, the performance of the duties and obligations set forth in **Exhibit A** attached hereto and made a part hereof, subject to the terms of this Agreement and the Operations Manual to be developed by the Manager and the City pursuant to the terms of this Agreement.

Section 2.3 Licensed Uses. The City and the Manager envision three (3) primary components of use of the Armory: the use by the City of certain space inside and certain grounds outside the Facility for municipal and special events use ("City Use"); public and private recreational and youth development use of the gymnasium and other space inside the Building and certain grounds outside the Building ("Recreational Use"); and public and private event use of the Drill Hall inside the Building and certain grounds outside the Building ("Event Use"); and ancillary and incidental programs appropriate for the Facility (the "Ancillary Use"). The Recreational Use, Event Use and Ancillary Use of the Armory shall be deemed revocable licensed uses. All capital improvements undertaken by Manager and its sublicensees shall be deemed owned by the City.

Section 2.4 Recreational, Event and Ancillary Uses and Plan. On or before September 1, 2011, Manager shall prepare a detailed plan for Recreational Use, Event Use and Ancillary Use ("REA Use Plan") and shall deliver a copy of such plan to the City. The REA Use Plan shall include already scheduled and anticipated scheduling for REA Use in calendar years 2011, 2012, and 2013; balanced budgets for REA Use for calendar years 2011, 2012, and 2013, with a breakdown of projected revenues including use fees, grants, and contributions; expenses including administration, maintenance, repairs, capital improvements, utility expenses, security expenses, and capital reserves. On or before September 1 of each year of the Term, Manager shall submit an updated REA Use Plan to the City. A schedule of use fees for REA Use, including those to be charged to community organizations; educational and other institutions including but not limited to SUNY Orange, the Newburgh Enlarged City School District, and Mount St. Mary College; and other persons and entities shall be included in each REA Use Plan and updates thereto.

### **ARTICLE 3 MISSION**

Section 3.1            Mission. Manager and the City have their respective missions and purposes the benefit of the citizens of the City of Newburgh and the surrounding communities, by providing recreational opportunities to disadvantaged youth and organizing, hosting or promoting community events in the City of Newburgh. Manager and the City seek to fulfill their respective mission by entering into this Agreement.

### **ARTICLE 4 TERM; TERMINATION**

Section 4.1            Term. The term of this Agreement (the “Term”) and the Licensed Uses shall be twenty-five (25) years, beginning on the Effective Date, and, unless sooner terminated pursuant to the provisions of Section 4.2 below, expiring on the twentieth-fifth (25<sup>th</sup>) anniversary of the Effective Date. This Agreement and the Licensed Uses may be extended and renewed for another term upon the mutual, written agreement of the parties hereto.

Section 4.2            Termination. This Agreement and the Licensed Uses may be terminated, subject to Section 4.3 below:

(a) by the City upon ninety (90) days written notice from City to Manager in the event of the failure of the Manager to utilize the Facility for the mission, as set forth in Section 3.1, as determined in the reasonable judgment of the City, provided that Manager shall have the opportunity to cure the breach or make good faith efforts and progress toward curing the breach on or before the expiration of the ninety (90) day notice period;

(b) immediately by the City upon notice to the Manager of the misappropriation of funds from the Operating Account or Facility operations by the Manager (and not merely by an employee of Manager, which shall be resolved under Article 6) or commission of another crime or offense that would, in the reasonable determination of the City, impair the ability of the Manager to perform its functions hereunder.

#### Section 4.3            Effect of Termination

(a) In the event this Agreement is terminated by the City pursuant to Section 4.2(a), the City shall reimburse Manager for any actual ordinary and necessary expenses incurred by Manager in withdrawing from the provision of services hereunder following such termination. The City’s payment of such expenses will occur only after Manager has provided reasonable evidence of the incurrence of such expenses. Except for the reimbursement of the above stated expenses, Manager shall have no other right or

remedy, at law or in equity, against the City for a termination pursuant to Section 4.2(a), except that, in the event the emergency situation is resolved at any time during the Term, this Agreement shall, at the option of both parties, once again become effective and Manager shall manage and operate the Facility under the terms hereof.

(b) Upon termination or expiration of this Agreement for any reason, (i) Manager shall promptly discontinue the performance of all services hereunder, (ii) the City shall promptly pay fees due third parties up to the date of termination or expiration (subject to proration if the Term ends other than at the end of the Operating Year), (iii) Manager shall make available to the City all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, and (iv) without any further action on part of Manager or City, the City shall, or shall cause the successor Facility manager to, assume all obligations arising after the date of such termination or expiration, under any Service Contracts, booking commitments and any other Facility agreements entered into by Manager in furtherance of its duties hereunder. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

## **ARTICLE 5 OWNERSHIP; USE OF THE FACILITY**

Section 5.1            Ownership of Facility, Data, Equipment and Materials. It is expressly understood that no land, space, improvement, or equipment is leased to Manager and that Manager shall not acquire any property interest in the Facility whatsoever, other than the Licensed Uses, which shall permit Manager to have the use of the Facility and the right to occupy and operate the Facility in order to carry out the purposes of this Agreement. The City will at all times retain ownership of the Facility, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including the equipment, furniture, displays, fixtures and similar property purchased and improvements made during the Term, at the Facility. Any data, equipment or materials furnished by the City to Manager or acquired by Manager as an Operating Expense shall remain the property of the City, and shall be returned to the City when no longer needed by Manager to perform under this Agreement.

Section 5.2            Management of Facility. Manager shall operate and manage the Facility (including the existing basketball court, office space and parking facilities), and in connection therewith may utilize all existing office equipment and other equipment at the Facility for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance and management of the Facility.

Section 5.3            Observance of Agreements. The City agrees to pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under

any bonds, debentures, loans and other financing and security agreements to which the City is bound in connection with its ownership of the Facility.

Section 5.4 City Use. Subject to the remainder of this Section 5.4, the City shall have the right to use the Facility, or any part thereof, rent-free for meetings, seminars, training classes, other non-commercial uses or for municipal purposes. Such City Use of the Facility shall (i) not compete with or conflict with the programming of Manager for Recreational, Event or Ancillary Uses; and (ii) be scheduled in advance upon reasonable notice to Manager pursuant to the Facility's approved scheduling policies. Upon request of the City, Manager shall provide to the City a list of available spaces and/or dates for City use of the Facility. City Use shall be in spaces not then occupied or for which there are no impending plans for occupancy by Manager consistent with the overall mission as set forth in Section 3.1.

Section 5.5 Restrictions on Use under Patent; Potential Supersession of Patent. The parties understand and acknowledge that the use of the Facility is restricted by the terms of the Letters Patent. Both parties further understand and acknowledge that the existing Letters Patent may be subject to modification or supersession. Each of the parties represents and warrants that in fulfilling its obligations hereunder it shall not utilize the property in any manner that would be a violation of the Letter Patent, in such form as it shall exist at the time of the use.

## **ARTICLE 6 PERSONNEL**

Section 6.1 Retention of Personnel. All Facility staff and other personnel shall be engaged or hired by Manager, and shall be employees, agents or independent contractors of Manager, and not of the City. Manager shall select, in its sole discretion but subject to City's right to approve the Operating Budget, the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel and, due to the fact that the Mission of Manager is primarily to benefit the citizens of the City and its school district, Manager shall give consideration to whether or not otherwise qualified applicants reside in the City or within the City school district as one factor in making employment decisions, as permitted by applicable law. The City specifically agrees that, subject to the Operating Budget approved by the City, Manager shall be entitled to pay its employees, as an Operating Expense, bonuses and benefits. The Manager shall be responsible for the acts or omissions of its employees (including Manager's employees previously employed by the City) and others performing services as employees or agents of Manager under this Agreement.

Section 6.2 Removal of Manager's Employees. The City may request the removal of any of Manager's employees and Manager agrees to meet with the City Manager to discuss any such request.

Section 6.3 General Manager. Personnel engaged by Manager will include an individual to serve as a full-time on-site General Manager of the Facility. The General Manager will have general supervisory responsibility for Manager and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

Section 6.4 Costs Not in Approved Operating Budget. Notwithstanding any other provisions of this Agreement, no change in personnel by Manager shall result in any Operating Expenses materially in excess of amounts in the approved Operating Budget.

Section 6.5 Non-Solicitation. During the Term and for a period of one (1) year after the end of the Term, neither City nor any of its departments or agencies shall solicit for employment, or encourage to cease rendering services to Manager, any of Manager's employees with whom the City has not had any prior employment (directly or through an employment agency) relationship, provided that no such restriction shall apply if Manager has notified the City in writing that at the end of the Term the Manager does not intend to retain such employee as an employee of Manager. The Manager agrees to respond, in writing, within thirty (30) days of any written request from the City as to whether an employee of Manager will be retained by Manager after the end of the Term. In the event that the City breaches this Section 6.6 with respect to any employee or agent of Manager, City shall pay to Manager as liquidated damages (and not as a penalty) an amount equal to one (1) year's salary and benefits for such employee or agent.

## **ARTICLE 7 OPERATING BUDGET**

Section 7.1 Establishment of Operating Budget. Attached hereto as **Exhibit B** shall be the Operating Budget for the initial Operating Year. The parties acknowledge that Manager may propose additional amendments to such Operating Budget for approval by the City in accordance with the terms of this Agreement. In the event the City fails to approve such amendments, the Operating Budget for the initial Operating Year shall be as attached in Exhibit B, together with the amendments described above in this Section 7.1. Manager agrees that at least ninety (90) days prior to the commencement of each subsequent Operating Year in respect of such year, it will prepare and submit to the City its proposed Operating Budget for such year. Each annual Operating Budget shall include Manager's good faith projection of Facility Revenues and Operating Expenses, presented on a monthly and annual basis, for the upcoming Operating Year. The City agrees to provide Manager with all information in its possession necessary to enable Manager to prepare each Operating Budget.

Section 7.2 Approval of Operating Budget. Each annual Operating Budget shall be subject to the review and approval of the City, which approval shall not be unreasonably withheld or delayed. In order for the City to fully evaluate and analyze

such budgets or any other request by Manager relating to income and expenses, Manager agrees to provide to the City such reasonable financial information relating to the Facility, including a calendar of events and list of tenants scheduled by Manager at the Facility, as may be requested by the City from time to time. If extraordinary events occur during any Operating Year that could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, Manager may submit an amendment to such budget for review and approval by the City (which approval shall not be unreasonably withheld or delayed). If the City fails to approve any annual Operating Budget (or any proposed amendment thereto), the City shall promptly provide Manager the specific reasons therefor and its suggested modifications to Manager's proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties. If despite the parties' good faith attempts, they do not, or cannot, agree on an Operating Budget for any particular Operating Year by the first day of such Operating Year, Manager shall operate the Facility pursuant to the Operating Budget for the prior Operating Year, but in such event the Manager shall have the right and option to terminate this Agreement upon one hundred twenty (120) days written notice to the City. If Manager elects to so terminate this Agreement it must make such election and send written notice to the City within sixty (60) days of the first day of such Operating Year or such right and option to terminate shall be waived.

Section 7.3            Adherence to Operating Budget. Manager shall use all reasonable efforts to manage and operate the Facility in accordance with the Operating Budget. Without the prior consent of the City, Manager shall not exceed, commit or contract to expend any sums in excess of the aggregate amounts allowed in the Operating Budget or otherwise approved by City, except for (i) additional expenditures necessary to perform an Emergency Repair, in which event Manager shall notify City prior to making such repair, (ii) increased costs resulting from the scheduling by Manager of additional events or activities at the Facility not contemplated by the Operating Budget in effect for such Operating Year; (iii) expenses for services or utilities which are not discretionary provided to the Facility by unaffiliated third parties, the cost of which is not within the reasonable control of Manager, such as the costs of utilities and insurance; and (iv) increased costs resulting from events scheduled pursuant to Section 5.4. Manager agrees to notify the City within thirty (30) days of any significant change or variance in the bottom line number in the Operating Budget, and any material increase in total Facility expenses from that provided for in the Operating Budget.

## **ARTICLE 8 PROCEDURE FOR HANDLING INCOME**

Section 8.1            Operating Account. All Revenue derived from operation of the Facility, including monies received from subleases or sublicenses, shall be deposited by Manager into an Operating Account as soon as practicable upon receipt. The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the parties specifically agree

that designated employees of Manager shall have authority to sign checks and make withdrawals from such account to pay Operating Expenses in accordance with the approved Operating Budget, subject to any other provisions contained in this Agreement. All checks drawn by Manager for the Armory shall be drawn from the Armory Operating Account and shall be signed by the chief executive officer of Manager, and all checks over Five Hundred (\$500) Dollars shall additionally be signed by the treasurer or another officer of the Board of Manager.

Section 8.2            Revenues in excess of Operating Expenses. Revenues remaining after payment of Operating Expenses under the Operating Budget shall be retained by Manager as working capital toward the following year's Operating Expenses, held as emergency reserves or applied toward Capital Expenditures. In the event, Manager determines that excess Revenues exist in the Operating Account, which are not otherwise needed as set forth in the prior sentence, then the Board of Directors of Manager may decide to issue to the City taxing authority a Payment in Lieu of Tax for some or all of the excess Revenue amount.

## **ARTICLE 9 FUNDING and EXPENSES**

Section 9.1            Source of Funding. Except as expressly provided below in Section 9.2 of this Agreement, Manager shall pay all items of expense for the operation, maintenance, supervision and management of the Facility from the funds in the Operating Account. The Operating Account shall be funded with amounts generated by operation of the Facility (as described in Article 8 above), or otherwise made available by Manager. Manager shall have no liability to the City or any third party in the event Manager is unable to perform its obligations hereunder, or under any third party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not generated from the operation of the Facility or otherwise made available by the City in a timely manner in accordance with this Agreement.

Section 9.2            Grant Funding. The City hereby permits the Manager to apply for grants in its name for which the Manager might not otherwise be eligible. All grants to the City received for the Facility shall be transferred to the Manager for deposit in the Operating Account within thirty (30) days of receipt of the grant funds if permitted by terms of the grant or shall otherwise be deposited in appropriate restricted accounts of the City for use solely for the Facility in accordance with the terms of the grant.

Section 9.3            Solicitation of Private and Public funding. Manager shall use its best efforts to (i) actively solicit private support for the Facility; (ii) actively solicit federal, state and local grants and other funds to support the operations and purposes of the Facility; and (iii) apply all funds contributed from all sources to Operating Expenses at the Facility and for Facility purposes. The City hereby agrees to use its reasonable efforts to assist Manager in the solicitation of federal, state and county grants and other sources of public funding to support the operations of the Facility.

Section 9.4                    2011 Budgeted Costs. The City has budgeted One Hundred Thousand (\$100,000) Dollars for utility costs for the Armory for calendar year 2011. Manager shall, on or before December 31, 2011, reimburse the City for its incurred utilities, grass mowing, and snow removal costs for January 1 - December 31, 2011, in an aggregate amount not to exceed One Hundred Thousand (\$100,000) Dollars. The City shall, on a monthly basis, forward copies of all paid utility bills and itemizations of costs incurred by the City for grass mowing and snow removal for January 1 - December 31, 2011 to Manager. All other planning, administration, maintenance, repairs, security, and capital improvement costs for calendar year 2011, including those for City Use, shall be borne by Manager, other than improvements, furniture, and telecommunication costs for City Use which shall be borne by the City.

Section 9.5                    Post-2011 Expenses. After 2011, and during the balance of the Term, all planning, administration, maintenance including but not limited to grass mowing and snow removal, repairs, security, capital improvements, and utilities costs for the Armory, including those for City Use, shall be included and paid as designated in the Operating Budget. Notwithstanding the above, costs for improvements, furniture, and telecommunication costs for City Use shall be borne by the City. Manager's responsibility for security shall not include regular City police patrol outside the Building and City police response to alarms and emergencies inside and outside the Building. Notwithstanding the above, if agreed to by the Board of Directors of Manager, City may provide certain maintenance and other services to the Facility through City employees, if permitted by law, and if no additional costs will be incurred by City or Manager for the provision of such services.

## **ARTICLE 10 FISCAL RESPONSIBILITY; REPORTING**

Section 10.1                    Records. Manager agrees to keep and maintain, at its office in the Facility, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its operations in connection with its management of the Facility. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the operations of Manager under this Agreement. The City or its authorized agent shall have the right to audit and inspect such records from time to time during the Term, upon reasonable notice to Manager and during Manager's ordinary business hours. Upon expiration of the Term and upon request, a copy of all such records shall be provided to the City.

Section 10.2                    Financial Reports. Manager agrees to provide to the City, on a quarterly basis, financial reports for the Facility including a balance sheet and statement of Revenues and expenditures (budget to actual) for year to date, which shall be an internally prepared compilation certified to be true and accurate by Manager to the best of its knowledge. In addition, Manager agrees to provide to the City a summary of activities, events and tenants of the Facility.

Section 10.3 Audit. Manager agrees to provide to the City an audited report on the accounts and records as kept by Manager for the Facility for the prior Operating Year (the “Annual Financial Report”). Costs associated with obtaining the Annual Financial Report shall be an Operating Expense of the Facility in the Operating Budget. Such audit shall be performed by an external auditor, and shall be conducted in accordance with generally accepted auditing standards.

Section 10.4 Travel Expenses. All travel and professional expenses of the Manager’s employees shall be paid to the extent actually incurred and included in the Operating Budget.

## **ARTICLE 11 CAPITAL EXPENDITURES**

Section 11.1 Schedule of Capital Expenditures. Manager shall annually, at the time of submission of the annual Operating Budget to the City, provide to the City a schedule of proposed Capital Expenditures to be made at the Facility.

Section 11.2 City Responsibility for Certain Capital Expenditures. The City shall determine whether to authorize and fund Capital Expenditures at the Facility that require structural alterations or that exceed Ten Thousand (\$10,000) Dollars in costs; provided, however, the City shall be under no obligation to make any such Capital Expenditures and provided further that Manager shall have no liability for any claims, costs or damages arising out of a failure by the City to make any Capital Expenditures. If requested by Manager, City will consider authorizing and funding such capital improvements and issuing debt for capital improvements at Facility. Funding for debt service on such debt shall be responsibility of Manager. Notwithstanding the above, the City and Manager have agreed to undertake roof repairs at the Facility as soon as funding is available, and Manager has agreed to undertake fundraising, grant writing and similar efforts to secure the funding for this Capital Expenditure.

Section 11.3 Other Capital Expenditures. Manager also shall have the right (but not the obligation) to make Capital Expenditures at the Facility. Manager may from time to time make changes and non-structural alterations, additions or improvements in or to the Licensed Premises, the cost of which does not exceed Ten Thousand (\$10,000) Dollars. Manager shall give notice to the City of the plans and specifications showing the proposed alterations, additions and improvements for the Capital Expenditures prior to undertaking or contracting for such work.

## **ARTICLE 12 FACILITY CONTRACTS; TRANSACTIONS WITH DIRECTORS’ AGENCIES**

Section 12.1 Execution of Contracts. Manager shall have the right to enter into Service Contracts and other contracts related to the operation of the Facility, as agent on behalf of the City, which are consistent with the Operating Budget and the other provisions of this Agreement. Any such material agreements shall contain standard

indemnification and insurance obligations on the part of each vendor or service provider, as is customary for the type of services or obligations being provided or performed by such parties. Without limiting the obligations of Manager under this Agreement, Manager shall have the right and authority to enter into contracting arrangements with any other person or entity for the provision of any service required or allowed to be performed by Manager pursuant to this Agreement.

Section 12.3 Transactions with Directors' Agencies. In connection with its obligations hereunder relating to the purchase or procurement of services for the Facility, Manager may purchase or procure such services, or otherwise transact business with, an agency for which a Director or Officer of Manager also serves as a director, officer or executive, provided that the prices charged and services rendered by such agency are competitive with those obtainable from any unrelated parties rendering comparable services.

**ARTICLE 13**  
**[Reserved]**

**ARTICLE 14**  
**AGREEMENT MONITORING AND GENERAL MANAGER**

Section 14.1 Contract Administrator. Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. Each party shall notify the other of the name of its contract administrator within thirty (30) days of execution hereof. Any and all references in this Agreement requiring Manager or City participation or approval shall mean the participation or approval of such party's contract administrator.

**ARTICLE 15**  
**INDEMNIFICATION**

Section 15.1 Indemnification by Manager. Manager agrees to defend, indemnify and hold harmless the City and its officials, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "Losses") suffered by such parties, arising out of or in connection with any (a) negligent act or omission, or intentional misconduct, on the part of Manager or any of its employees or agents in the performance of its obligations under this Agreement, or (b) breach by Manager of any of its representations, covenants or agreements made herein.

Section 15.2 Indemnification by the City. To the extent permitted by law, City agrees to defend, indemnify and hold harmless Manager and its directors, officers, employees, agents, successors and assigns, against any Losses suffered by such parties, arising out of or in connection with (a) any negligent act or omission, or intentional misconduct, on the part of City or any of its employees or agents in the

performance of its obligations under this Agreement, (b) a breach by City of any of its representations, covenants or agreements made herein.

Section 15.3 Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto (“Indemnitee”) is indemnified by the other party (“Indemnitor”) under this Article 15, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnitee shall agree to any settlement without the other’s prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor’s expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than twenty (20) days after any third party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 15.4 Survival. The obligations of the parties contained in this Article 15 shall survive the termination or expiration of this Agreement.

## **ARTICLE 16 INSURANCE**

Section 16.1 Types and Amount of Coverage. Manager and City shall each procure and maintain insurance for the Facility during the Term of this Agreement as is set forth in Exhibit C attached hereto, and shall provide to the City promptly following the Effective Date, a certificate or certificates of insurance evidencing such coverage. Each of Manager and City shall maintain such referenced insurance coverage at all times during the Term, and will not make any material modification or change from these specifications without the prior approval of the other. Each insurance policy shall include a requirement that the insurer provide the other party at least thirty (30) days written notice of cancellation or material change in the terms and provisions of the applicable policy. The cost of all such insurance shall be an Operating Expense. The cost of the insurance and the cost of deductibles may be made from Revenues.

Section 16.2 Additional Insureds. The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy to be obtained by each party shall name the other party as an additional insured. The workers compensation policy to be obtained by Manager hereunder shall contain a waiver of all

rights of subrogation against the City. Manager shall require that all third-party users of the Facility, provide certificates of insurance evidencing insurance appropriate for the types of activities in which such user is engaged. If Manager subcontracts any of its obligations under this Agreement or otherwise contracts for work to be performed at the Facility or requires another party to provide insurance as a condition of any Vendor Agreement or license, Manager shall either: (a) cover all subcontractors, contractors, vendors, licensees under its policies of insurance, or (b) require each subcontractor, contractor, vendor or licensee not so covered to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, and name Manager and the City as additional insureds.

Section 16.3 Restoration. If the Facility shall be damaged or destroyed by fire or other cause covered by insurance, such damages shall be promptly repaired or replaced so that the Facility is able to be used for the same purposes as prior to the damage. Manager shall immediately commence and diligently prosecute to completion any restoration or repair within six months (or such longer period as is reasonably necessary to complete such restoration and repairs) after receipt of insurance proceeds that are available for such work. Should Manager fail, after notice from City of the need thereof, to perform its obligations required hereunder, City in addition to all other available remedies may, but shall not be so obligated to enter upon the Facility property and perform Manager's failed obligations using any equipment or materials suitable for such purpose and City may demand from Manager reimbursement of all costs and expenses so incurred and not covered by insurance proceeds. Notwithstanding any other provision of this Article, in the event that any restoration is reasonably estimated to take more than three (3) months to complete or the amount of insurance proceeds available are insufficient to pay for the costs of the restoration in full, Manager shall have the right to terminate this Agreement upon thirty (30) days notice to the City and, as of the termination date, shall have no further obligation to City to operate the programs and provide the services set forth in this Agreement.

## **ARTICLE 17 REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 17.1 Manager Representations and Warranties. Manager hereby represents, warrants and covenants to City as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of Manager herein, and that no third party consent or approval is required to grant such rights or perform such obligations hereunder; and

(b) that this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar Laws affecting creditors' rights generally or by general equitable principles.

(c) that Manager will comply with the terms of the Letter Patent, as may be modified, from time to time, and all Laws applicable to its management and use of the Facility, provided that Manager shall not be required to undertake any compliance activity to the extent such activity requires Capital Expenditures that are not approved by the City, nor shall Manager have any liability under this Agreement therefor, if such activity requires any Capital Expenditure.

Section 17.2 City Representations, Warranties and Covenants. City represents, warrants and covenants to Manager as follows:

(a) that it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of City herein, and that no other third party consent or approval is required to grant such rights or perform such obligations hereunder.

(b) that this Agreement has been duly executed and delivered by City and constitutes a valid and binding obligation of City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

## **ARTICLE 18 MISCELLANEOUS**

Section 18.1 No Discrimination. Manager agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age.

Section 18.2 Use of Facility Names and Logos. Manager shall have the right to use throughout the Term (and permit others to use in furtherance of Manager's obligations hereunder), for no charge, the name and all logos of the Facility, on Manager's stationary, in its advertising of the Facility, and whenever conducting operations of the Facility. All intellectual property rights in any Facility logos developed by the Manager or the City shall be and at all times remain the sole and exclusive property of the City. Manager agrees to execute any documentation requested by the City from time to time to establish, protect or convey any such intellectual property rights.

Section 18.3 Force Majeure; Casualty Loss.

(a) Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Agreement due to

an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other party within ten (10) days of the date on which such party gains actual knowledge of such Event of Force Majeure. Notwithstanding the foregoing, in no event shall a party's failure to make payments due hereunder be excusable due to an Event of Force Majeure.

(b) In the event of damage or destruction to a material portion of the Facility by reason of fire, storm or other casualty loss that renders the Facility (or a material portion thereof) untenable, the Manager and City shall work together to use reasonable efforts to remedy such situation. If notwithstanding such efforts, such damage or destruction is expected to render the Facility (or a material portion thereof) untenable for a period estimated by an architect selected by the City at Manager's request, of at least one hundred eighty (180) days from the date of such fire, storm or other casualty loss, either party may terminate this Agreement upon written notice to the other, provided that in the event the Facility once again becomes tenable at any time during the Term, this Agreement shall, at the option of Manager, once again become effective and Manager shall manage and operate the Facility under the terms hereof, except that the Term shall be extended for a period of time in which the Facility was closed.

Section 18.4 Manager Code of Ethics. Manager shall have a code of ethics and conflict of interest policy governing its Board members, employees and activities. The City may request from Manager those documents necessary for the City to confirm the establishment of a code of ethics and conflicts of interest policy. Manager shall report on compliance with the code of ethics and conflict of interest policy and any issues that have arisen in its annual report to City.

Section 18.6 Liens. Manager shall keep the Facility free from any liens arising out of work performed, materials furnished or obligations incurred by or for Manager.

Section 18.5 Assignment; Sublicense. Neither party may assign this Agreement without the prior written consent of the other. Any purported assignment in contravention of this Section shall be void. Manager may not sublicense or transfer this Agreement, except that Manager may sublicense limited portions of the Armory devoted to Recreational Use, Event Use and Ancillary Use for specific periods of time.

Section 18.6 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

If to the City:

If to Manager:

City of Newburgh  
83 Broadway  
Newburgh, New York 12550  
Street  
Attn: City Manager  
12550

Unity

Newburgh Armory  
Center, Inc.  
321 South William  
Newburgh, New York

With a copy to:  
Michelle Kelson, Esq., Corporation Counsel  
City of Newburgh  
Frankel, P.C.  
83 Broadway  
Newburgh, NY 12550  
12553

With a copy to:  
David L. Rider, Esq.  
Rider, Weiner &  
655 Little Britain Rd.  
New Windsor, NY

The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

Section 18.7 Severability. If a court of competent jurisdiction or an arbitrator determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 18.8 Entire Agreement. This Agreement (including the exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

Section 18.9 Governing Law. The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of New York, without regard to its conflict of laws principles.

Section 18.10 Amendments. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought.

Section 18.11 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter

the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 18.12 Relationship of Parties. Manager and City acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Facility, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between City and Manager. In operating the Facility, entering into contracts, accepting reservations for use of the Facility, and conducting financial transactions for the Facility, Manager acts on behalf of and as agent for City (but subject to the limitations on Manager's authority as set out in this Agreement), with the fiduciary duties required by law of a party acting in such capacity.

Section 18.13 Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the parties and transmitted by facsimile, and if so executed and transmitted, shall be effective as if the parties had delivered an executed original of this Agreement.

Section 18.14 SEQRA Compliance. Manager shall be responsible for the preparation of any and all documents and costs associated with compliance with the requirements of the New York State Environmental Quality and Review Act ("SEQRA") pertaining to approvals for the Recreational Use, Event Use and Ancillary Use.

Section 18.15 As Is. The Recreational Use, Event Use and Ancillary Use portions of the Armory shall be licensed to Manager "as is" without any representations as to their condition, environmental or otherwise.

IN WITNESS WHEREOF, each party hereto has caused this Management Agreement to be executed on behalf of such party by an authorized representative as of the date first set forth above.

CITY OF NEWBURGH  
CENTER,

NEWBURGH ARMORY UNITY  
INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Its:

\_\_\_\_\_  
Name:  
Its:

## **EXHIBIT A MANAGER DUTIES**

Manager's obligations under the Agreement shall consist of the following obligations, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual and the Agreement:

(a) Manage all aspects of the Facility in accordance with the Operations Manual and the terms of this Agreement.

(b) Establish and adjust prices, rates and rate schedules for user, license, occupancy, and advertising agreements, and booking commitments. Manager may deviate from the established rate schedule when entering into any such agreements if determined by Manager, using its reasonable business judgment, to be necessary or appropriate with respect to the specific situation.

(c) Procure, negotiate, execute, administer and assure compliance with Service Contracts, and other contracts related to the operation of the Facility and provide the City with a copy of any such contracts or agreements, upon request.

(d) Require that all material vendors and licensees of the Facility execute vendor/license agreements, containing standard indemnification and insurance obligations on the part of each such vendor/licensee.

(e) Provide standard form advertising and sponsorship contracts and user/rental and licensing agreements for use at or with respect to the Facility.

(f) Operate and maintain the Facility, including the equipment utilized in connection with its operation and any improvements made during the term of this Agreement, in the condition received, normal wear and tear excepted.

(g) Arrange for and otherwise book events at the Facility in accordance with a booking schedule to be developed by Manager.

(h) Hire or otherwise engage, pay, supervise, and direct all personnel Manager deems necessary for the operation of the Facility in accordance with Article 6 of the Agreement, and conduct staff planning, retention and training programs as determined to be necessary by Manager in its sole discretion.

(i) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to the City upon request, in accordance with Section 10.1 of the Agreement.

(j) Submit to the City, in a timely manner, financial and other reports detailing Manager's activities in connection with the Facility, as set forth in Section 10.2 of the Agreement.

(k) Prepare a proposed annual Operating Budget and submit such proposed budget to the City, both in accordance with Article 7 of the Agreement.

(l) Pay all Operating Expenses and other expenses incurred in connection with the operation, maintenance, supervision and management of the Facility from the Operating Account or with funds otherwise made available by Manager.

(m) Secure, or assist the City (or any other third party, as applicable) to secure, all licenses and permits necessary for the operation and use of the Facility for the specific events to be held therein, and for the general occupancy of the Facility. The City shall cooperate in this process to the extent reasonably required. All costs associated with this process shall be Operating Expenses.

(n) Collect in a timely manner and deposit in the Operating Account all Revenues, as more fully described in Section 8.1 of the Agreement.

(p) Pay all Taxes.

(q) Plan, prepare, implement, coordinate and supervise all public relations and other promotional programs for the Facility.

(r) Prepare, maintain and implement on a regular basis a marketing plan for the Facility.

(s) Establish and maintain a website for the Facility on which it shall post the schedule for the Facility and information regarding hours, fees, events, programs and activities.

(t) On an annual basis, cause a written inventory to be taken of all furniture, fixtures, office equipment, supplies, tools and vehicles at the Facility, and deliver a written report of the foregoing to City. Manager shall document all major damage to, or loss in, such inventory during the Term as soon as such damage or loss is discovered by Manager, and Manager shall promptly notify City of any such damage or loss.

(u) Purchase, as agent on behalf of the City and with funds in the Operating Account or otherwise made available by Manager, and maintain during the Term, all materials, tools, machinery, equipment and supplies necessary for the operation of the Facility.

(v) As agent for the City, manage risk management and Facility insurance needs, as more fully described in Article 16 of the Agreement.

(w) Make and be responsible for all routine and minor repairs, maintenance, preventative maintenance, and equipment servicing. Manager shall be responsible for ensuring that all repairs, replacements, and maintenance shall be of a quality and class at least equal to that of the item being repaired, replaced or maintained. Any replacement of an item in inventory, or any new item added to the inventory, which is paid for by the City, shall be deemed the property of the City.

(x) Cause such other acts and things to be done with respect to the Facility, as determined by Manager in its reasonable discretion to be necessary for the management and operation of the Facility following the Effective Date.

**EXHIBIT B  
OPERATING BUDGET (1<sup>ST</sup> OPERATING YEAR)**

**EXHIBIT C  
INSURANCE**

At all times during this Agreement, City and Manager shall maintain the following insurance of the types and in the amounts specified below against claims occurring on, in, or about the Facility building itself:

<b>Type:</b>	<b>Amount: Not less than:</b>	<b>Party Required to Obtain Coverage</b>
Commercial general liability insurance (including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability, personal and advertising injury liability)	\$3,000,000 for any one occurrence (\$1,000,000 for Personal Injury) (\$3,000,000 for Property Damage)	Manager and City
Umbrella or excess liability insurance	Replacement value of the Facility	Manager and City
Workers compensation and disability coverage	As shall be required by and be in conformance with the laws of the State of New York	Manager
Professional liability insurance and self-insured employment practices liability coverage	\$1,000,000 for any one occurrence	Manager

**RESOLUTION NO.: 147 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE AN ORDER ACCEPTING THE PROPOSAL  
SUBMITTED BY INHANCE UTILITY SOLUTIONS FOR  
THE AMOUNT OF \$20,900.00 IN CONNECTION WITH THE  
CONVERSION OF SANITATION DATA AND DATA MAINTENANCE**

**WHEREAS**, the City of Newburgh is currently under a contract with InHance for certain software and utility billing mechanisms; and

**WHEREAS**, the City now wishes to increase the current contract to provide for additional services in connection with the conversion of sanitation data and for billing and maintenance; and

**WHEREAS**, the cost for such additional services and software shall be \$20,900.00; and

**WHEREAS**, a copy of the Proposal Specification Order is attached hereto; and

**WHEREAS**, this Council has reviewed the Order and has determined that acquiring such additional services and software to consolidate all utility billing is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the attached Proposal Specification Order accepting the Proposal submitted by InHance Utility Solutions for the amount of \$20,900.00 in connection with the conversion of sanitation data and data maintenance.

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

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4**

**Abstain - Councilman Dillard - 1**

**ADOPTED**

147-11

HARRIS



**Proposal Specification**

City of Newburg  
March 3, 2011

**Additional record conversion for IUS**

Increase license (location record limit to 15,000)	\$7,000.00
Conversion of Sanitation Data*	\$7,000.00
3 days onsite	\$3,900.00
Project Management	\$2,000.00
<b>Proposal Total:</b>	<b>\$19,900.00</b>

*\*Data conversion includes conversion of up to 7,000 locations, customers, balance summary and history of charges and payments. Includes up to 3 conversions.*

- Annual maintenance will increase \$1,000 and will be prorated to current maintenance renewal period.
- Onsite days are Monday – Friday. Travel and living expenses are not included and will be billed separately.
- Final review of all customer reports, bill export file and custom programming will need to be completed during the conversion testing phase. Additional programming may be required.
- Estimated time to complete project is 90 days.

Proposal is good through April 15, 2011. To order just sign below and fax back to Debra Laskowski at 903.535.9967.

**Above Order Accepted and Approved By:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**RESOLUTION NO.: 148 - 2011**

**OF**

**JULY 11, 2011**

**RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW  
YORK TO TRANSFER \$20,900.00 FROM CONTINGENCY  
TO INFORMATION SYSTEMS IN CONNECTION WITH INHANCE  
UTILITY SOLUTIONS TO PROVIDE CONVERSION OF SANITATION  
DATA AND DATA MAINTENANCE**

**BE IT RESOLVED**, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Sanitation		
Fund Balance S.0911	\$20,900.00	
Sanitation		
Contractual S.8160.0401		\$20,900.00

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

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine - 4**

**Abstain - Councilman Dillard - 1**

**ADOPTED**

**OLD BUSINESS**

**RESOLUTION NO.: 121 - 2011**

**OF**

**JULY 11, 2011**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH  
TBE-MONTGOMERY LLC FOR SOLID WASTE PROCESSING AND  
DISPOSAL**

**WHEREAS**, the City of Newburgh seeks to better manage the disposal of its solid waste; and

**WHEREAS**, TBE-Montgomery LLC has developed a process for sorting, separating and collection solid waste and using such waste to generate renewable electrical energy; and

**WHEREAS**, TBE-Montgomery LLC has presented a proposal to collect and dispose of the City's solid waste to use in its renewable electrical energy process; and

**WHEREAS**, TBE-Montgomery LLC has presented a proposal to collect the City's solid waste at a substantially lower cost than the City currently pays for disposal of solid waste at the Orange County Transfer Station; and

**WHEREAS**, this Council has reviewed such agreement and finds that the execution of such agreement is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into an agreement with TBE-Montgomery LLC, in substantially the same form as annexed hereto and subject to such other terms and conditions as may be required by the Corporation Counsel, for the disposal of solid waste.

**Councilwoman Bell moved and Councilwoman Bello seconded that the resolution be tabled.**

**Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello - 3**

**Nays - Councilman Dillard, Mayor Valentine - 2**

**TABLED**

RESOLUTION NO.: 122 - 2011

OF

JUNE 20, 2011

RESOLUTION AMENDING RESOLUTION NO: 264-2010,  
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW  
YORK TO TRANSFER \$10,765.00 FROM CONTINGENCY  
TO TAX COLLECTOR TO FUND PAYROLL FOR MARIE GIDA  
TO CONTINUE AS PART-TIME CASHIER

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
Contingency A.1900.1990	\$10,765.00	
Tax Collector Temporary Employee A.1330.0110		\$10,765.00

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

**Ayes -Councilwoman Angelo, Councilwoman Bello, Mayor Valentine-3**

**Nays - Councilwoman Bell, Councilman Dillard - 2**

**ADOPTED**

## GENERAL PUBLIC COMMENTS

Alden Link, 119 Broadway said that when they first came to Newburgh they saw opportunity for growth and improvement. Over the years some things have improved but the appearance of the City is much the same as it was. Many businesses have left because Newburgh is not a user friendly place. Unemployment is high. A major problem in the city is the Historic designation and the Architectural Review Commission. We have a testament to their affect on Newburgh across the street. Here was an owner who was investing in his estimation about 200,000.00 to produce a work of art. The ARC stopped him and you know the rest of the story. A Historic District is a museum and museums don't make money in fact they have to be subsidized. Anyone who has seen their tax bill knows this. Can we expect to maintain 19<sup>th</sup> Century buildings in a potential modern city? We cannot. He asked the Mayor and City Council to de-designate the Historic District and do away with the ARC. Let people upgrade their properties to produce viable tax paying investments.

Carol Link, said that they have owned two properties on Broadway since 1985 or 1986 and they have just started getting viable tenants in the past three years. It is lovely to have rent paying tenants. When she collected the rents for June she received complaints from both tenants that there are too many loitering people in front of their stores and it is intimidating normal business. She wonders if there is a loitering law. In many cases the police are called and they come and chase them away but as soon as the police leave they come back. If there is a loitering law, why isn't it enforced?

Police Chief, Michael Ferrara said that unfortunately the loitering laws that are on the books are loitering for the purpose of prostitution and loitering for the purpose of using narcotics; not marijuana. They are not for just hanging out and drinking beer. These are common complaints that we get but it is a civil right to be able to hang out in front of store. The Police have responded to that address in the past and the officers have been watching the area for loud music, use of narcotics, open container and disorderly conduct. It is unfortunate that it happens in front of the businesses and he wishes he had more officers to spend more time on these issues. This is the type of complaint that they could handle with a foot patrol and a more uniform visibility.

Denise Ribble, City of Newburgh said that there is a pending project behind 280 Broadway in the parking lot. The project is looking for eighty parking space variances and there is the capacity of the Planning Board to require a buffer. In many cases where we have the issue of parking variances, the Planning Board approves the site plan without any recommendation and

then they send it to the Zoning Board and the Zoning Board ends up being the good guy or bad guy by approving parking variances. For eighty parking variances she thinks that we need to do some better planning because we have a lot of situations where we don't have enough parking and when someone goes to the Planning Board or Zoning Board it seems like we are giving parking variances. There is something the Planning Board can do prior to them going to the Zoning Board and putting the whole decision on the Zoning Board so she would like the Council to see if the Zoning Board would consider that recommendation. In regard to the Pop Warner discussion, she thinks that going from \$1.00 to \$1,000.00 is a big jump and asked that they reconsider that since all of the people who participate are City of Newburgh youth. She also suggested that Pop Warner has asked to be able to run the concession so why not have them donate a percentage of the concession back to the City? This might be a way to have a win, win for both organizations. She hopes that our sanitation RFP will be comparing apples to apples and not apples to lemons. She hasn't seen it yet so she is assuming that it is being reworked. As for the decision to repay the Crystal Lake loan with Section 108 money, she did not agree with that decision. However, at the point that the loan has been paid off, she believes it is important to look at Crystal Lake as a potential development site.

Barbara Smith, Powell Avenue thanked Councilman Dillard for tabling the resolution regarding sanitation because we really do need some community input with questions that obviously have not been answered. Are we still considering privatization of our garbage pick up?

Mayor Valentine said that there is an RFP that is soon to go out.

Barbara Smith said that the head of our DPW made a good comment with regard to if we go to privatization and we are depending on someone else to pick up our waste, how do we know that they are coming into our city with empty trucks? How do you know what is being dumped? There could be a penalty with regard to the waste that is being dumped if it is not acceptable. There are so many questions and so many things to talk about and we want to have something to say about it.

Judy Kennedy, 162 Grand Street asked how to get a copy of that RFP?

Acting City Manager, Richard Herbek said that it is available on the website.

Judy Kennedy asked about the process on Item #30. She completely supports the Unity Center and the need for a long term agreement at the Armory and what is being done there because they have put together

something we can't do as a city. If she ever sits on the Council and someone hands her a contract the night of a deal, she will say no. That should never happen. No one should be asked to vote on something that they have not had a chance to read and understand thoroughly. There have been too many mistakes and things going on so there needs to be different processes here in order to let every person on this Council have the opportunity to read and understand what they are voting on before they are asked to vote on it. That is only fair and right. On all of the grants for items #24, 25 & 27 she would like to know what results each of these grants is supposed to produce and what is supposed to come out of them. How are you going to measure the success of having that grant and how are you going to report back on what results you are supposed to produce rather than just having this money do something. We have a lot of grant money that flows through this city and she wants to know what we are actually doing and what the results are.

Michael Gabor, Grand Street reiterated what Ms. Kennedy just said. It seems to him like the Council is sitting with their hands on their ears not listening. Councilwoman Bello made a very good point but the rest of the Council had comments that had nothing to do with the issue that she is bringing up. Before you vote on something you have to know what you are voting for. He said that he wouldn't sign a contract unless it was fully explained to him. He can't believe that at the Work Session on Thursday night they had the person sitting in front of them who wrote that contract instead of a contract lawyer. You need a contract lawyer reviewing this and explaining how it is good for the citizens of the City who you are representing. It is pretty obvious that before you vote on something or sign something that you fully have to understand it.

Mary Ann Prokosch, City of Newburgh said that she completely understands twenty-five years for the Unity Center to raise the money but do they need the whole package? Can we retain the rights to the land to use it for what other things are included in the scope that the State has given us? Her concern is that at some point we will have a need for open space and we are limiting ourselves from being able to use that open space.

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

## COMMENTS FROM THE COUNCIL

Councilwoman Angelo thanked everyone for coming tonight and for their great input. She noted that they made over \$4,000.00 in donations for the fireworks and they are writing the thank you letters now.

Councilwoman Bell said that she is so tempted to fall into the pit of negativity that has just been dug by some of the people standing up tonight but she is not going to go their with them. She thinks that she has proven herself to be someone who is thoughtful, insightful and who does what she believes is best for the City. Six months of working on a contract is not just handing it to her five minutes before a meeting. She encouraged everyone to be the change that they wish to see in Newburgh. So many people complain and talk about what is not right and what is broken but if we each roll up our sleeves and get involved and work hard and work together then we can make a difference. All the antagonistic head butting doesn't serve us and we should all see that by now. She encouraged everyone to work together and fight to be the change that we wish to see in our beautiful city. She thanked everyone for coming.

Councilwoman Bello thanked everyone for coming tonight and said that she appreciates their comments as they are very important to her. She wished everyone a good night and said to be careful going home.

Councilman Dillard thanked everyone for coming and for their comments. He thinks that they need to have that session with Mr. Taylor or his protégé so if they can work something out with the City Manager, Corporation Counsel, DPW and the Comptroller he thinks they should hash this thing out face to face and resolve all issues so that we can move forward.

Mayor Valentine said in regard to Pop Warner that they were at the same meeting where Aquanetta Wright was announcing the Summer Jazz Series and a Dentist from Smile Works sat next to her. At the close of the meeting he came up and asked how much they needed and when he was told they needed \$1,000.00 he said that he would sponsor it. He has put in four calls to the people at Pop-Warner and has not gotten a return call back. Sometimes these organizations have the best of intentions with no organizational skills whatsoever, which is a shame because in the end it is the kids that suffer. Pop-Warner used to come to the City every CDBG season with the exact same proposal from the year before with the date changed so they got cut out of that. Here there is a sponsor and a private business person willing to write a check and they don't have the decency to call him back. Maybe they have called back since then but we get picked on because we are

charging \$1000.00 to break even on the expenses of having the lights on and maintaining the lawn because we have never done it. Now everybody is on the same playing field with pricing. They do have the availability to raise funds and do concessions as well as do some fundraising and get sponsors.

There being no further business to come before the Council, the meeting adjourned at 9:35 p.m.

LORENE VITEK  
CITY CLERK

