

A regular meeting of the City Council of the City of Newburgh was held on Monday, October 22, 2012 at 7:00 P.M. in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

The Prayer was led by Father Hernandez with St. Patrick's Church and the Pledge of Allegiance was performed in unison.

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

Councilwoman Angelo moved and Councilwoman Lee seconded that the minutes of the October 4, 2012 Work Session and the October 9, 2012 City Council Meeting be approved.

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

CARRIED

## PRESENTATION

Chris Knasiak and Jason Nordlund with the Districting Committee presented the proposed map of the new wards.

## **COMMENTS FROM THE PUBLIC REGARDING THE AGENDA**

**Denise Ribble, City of Newburgh, submitted and read the attached comments.**

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

MID BROADWAY DEVELOPMENT AGREEMENT

I HAVE THESE QUESTIONS AND RAISE THESE CONCERNS SPECIFICALLY BECAUSE OF PAST AGREEMENTS WHICH HAVE NOT ADDRESSED THEM RESULTING IN LOSSES TO THE CITY (WEST MED TECH, LEYLAND ALLIANCE, LIBERTY STREET SCHOOL, BURTON TOWERS, ETC.). I ALSO UNDERSTAND FROM MR. NORMALIE THAT THE COUNCIL DOES HAVE A LITTLE MORE TIME TO GET THE AGREEMENT RIGHT.

I WOULD LIKE TO KNOW IF IMPACT FEES ARE SPECIFIED IN THIS AGREEMENT AND WHAT DO THEY COVER? HOW WERE THEY CALCULATED?

WHO IS RESPONSIBLE FOR INFRASTRUCTURE IMPROVEMENTS ON SITE AND CONNECTING TO THE SITE?

IS THERE FLEXIBILITY IN THE LANGUAGE FOR BOTH THE DEVELOPER AND THE CITY REGARDING THE COMMERCIAL VENTURE (i.e. if the supermarket is not economically feasible after the market analysis is complete)?

CAN THE COMBINED POLICE AND FIRE STATION CONCEPT BE INCLUDED, IN ADDITION TO FLEXIBLE LANGUAGE REGARDING THE COMMERCIAL VENTURE? THIS COULD POTENTIALLY HELP THE DEVELOPER WITH PUBLIC FUNDING ACQUISITION AND HELP THE CITY'S TAXPAYERS COVER THE COSTS OF THE FIRE AND SAFETY BUILDING WHICH ARE IMMINENT.

AT WHAT POINT WILL DETAILED FINANCIAL PRO FORMA'S BE REQUIRED? WHO WILL EVALUATE THEM? IF NOT ADEQUATE, HOW IS THAT ADDRESSED?

IS THE CITY SIGNING ON TO ANY ASPECT OF PERFORMANCE BONDING?

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

**There were no comments.**

## CITY MANAGER'S STATEMENT

Richard Herbek, City Manager, said that in light of the incident reported in the Times Herald Record last week, he thinks it is only appropriate that he make a statement. *"Last week it was reported in the newspaper that around 7:00 in the evening a woman who is alleged to be a prostitute and drug addict got into my vehicle. That is a true statement. That woman is a woman I have known for some time and who I have been trying to get to enter a methadone or detox program to address some serious issues. Some weeks ago I even met with Linda Muller of the Family Health Center disclosing the woman's name and history in my efforts to get her some help. Some real help. My whole life I have been the kind of person that when something is broken I need to fix it. I have never been able to just let things lay if I believe they are wrong and sometimes that causes problems for me but I believe that is very much what makes me a good City Manager. When I started here three years ago, the City was teetering on the verge of bankruptcy and my need to fix things caused me to wade right in addressing all of the broken things, discarding the evil things, chewing away the corrupt things while trying to salvage the good things. That same character trait of fixing broken things caused me to try to help this woman despite the appearance of it that should have told me otherwise. In retrospect maybe I should have backed away and declined to help because of who she appeared to be. I knew who she was but I tried to help anyway. Perhaps naively I thought that without my help she could die on the streets. I did this not as your City Manager but as a human being and I allowed the human being in me to prevail over the risk of how my behavior could be perceived. In trying to help her I have created a situation that is an embarrassment to the City, to me personally and especially to my wife and family with whom I spent a very difficult weekend. I was so distraught with the weight of all of this that by Sunday morning I called the Mayor and told her that I intended to resign. During the rest of that day and all day today I thought about who I was and the commitment I have made to the people of Newburgh. By resigning I would be abandoning those people, our dedicated staff, three years of our very best efforts and every positive stride the City has made under my leadership leaving the City subject to seeing all of our efforts unraveled. It would be easy to resign. It is hard to stay. It is easy to be a coward and it is hard to stand here and face you but I do so today full of resolve that I will fulfill the commitment that I have made to this City. Nothing in that unfortunate incident impacted my ability to manage the City nor will it impact my ability in the future and I do not intend to turn my back on the City now. This concludes my statement and it is all that I will have to say on this matter. I acknowledge that I did something wrong and I confirm that I will continue to manage the City and lead it out of its problems. I hope you respect that this is a private matter between me and my family and allow me to leave it at that. Thank you."*

**RESOLUTION NO.: 180 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION ADOPTING THE CITY OF NEWBURGH  
HAZARD COMMUNICATION POLICY**

**BE IT RESOLVED**, that the Council of the City of Newburgh, New York hereby adopts the City of Newburgh Hazard Communication Policy, a copy of which is attached hereto and made a part of this Resolution; and

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

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

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

**ADOPTED**

180-12

**CITY OF NEWBURGH**  
**HAZARD COMMUNICATION PROGRAM**  
**(Employee Right To Know)**

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**PURPOSE**

The purpose of this program is to ensure that the City of Newburgh is in compliance with the OSHA Hazard Communication Standard (HCS) 29 CFR 1910.1200 regarding hazardous materials in the workplace.

**SCOPE**

This program establishes requirements for the use of hazardous material labels and other hazard warning methods, Material Safety Data Sheets (MSDSs), hazardous materials evaluations, annual inventories, and employee information and training on hazardous materials. The program will ensure that:

- All employees have proper training and awareness of hazardous materials in the workplace.
- Material Safety Data Sheets (MSDS) are on file for employee access.
- Proper posting and container labeling are accomplished.

**RESPONSIBILITIES**

This Program applies to all employees, including contract employees, who may come into contact with or be exposed to hazardous materials at the workplace while performing their normal duties or during emergency conditions. It also applies to those who are involved in the purchase, transportation, or storage of hazardous materials.

**Management Shall:**

- A. Provide training, keep records of training, and provide copies of those records to appropriate supervisors.
- B. Ensure a list is maintained of all hazardous materials in the workplace.
- C. Ensure that MSDSs are readily available and the locations of MSDS information are identified to employees.

- D. Evaluate the hazard potential of new hazardous materials being introduced into the workplace and recommend safer alternatives, if available.
- E. Provide guidance for labeling of hazardous material containers.
- F. Ensure workplace inspections include evaluations of hazardous material safe handling and storage practices.

**Supervisors Shall:**

- A. Identify the hazardous materials normally associated with jobs under their supervision and make sure their employees receive the appropriate Hazard Communication training (both general and specialized) before they begin any work assignment involving hazardous materials.
- B. Notify management regarding the use of new hazardous materials. Whenever possible, the least hazardous substance will be procured.
- C. Notify management regarding new uses for existing hazardous materials.
- D. Ensure personnel employ the protective measures prescribed by MSDSs and local operating instructions when working with hazardous materials.
- E. Ensure personnel use, transport, and store hazardous materials in a safe manner.
- F. Ensure hazardous material containers are labeled properly (including portable containers).
- G. Ensure current MSDSs are available for the hazardous materials used.

**Employees Shall:**

- A. Familiarize themselves with hazard warnings, hazard labels, and MSDSs so they can use this information where needed.
- B. Employ the protective measures prescribed by MSDSs and local operating instructions when working with hazardous materials.

**Contractor Requirements:**

Contractors are required to have their own Hazard Communication Program. However, the City of Newburgh must provide the contractors with information specific to City operations. The contractors must, in turn, convey this information to their employees.

**TRAINING**

**A. Initial Training**

For employees whose duties require them to work around hazardous materials, initial training shall be provided by Management before they begin their work assignment. This training will cover the following topics:

1. A summary of the standard and a copy of the written program.
2. Operations in the work area where hazardous materials are present.
3. How to read warning labels and identify the presence or release of hazardous materials.
4. Emergency procedures for spills/accidents, including fire hazards, first aid, clean-up, and disposal.
5. Location and availability of this Hazard Communication Program, including hazardous materials lists and MSDSs.
6. How to read an MSDS and use it to identify (at a minimum):
  - (a) Physical and Health Hazards
  - (b) First Aid Procedures
  - (c) Protective Measures
  - (d) Storage and Handling Procedures
  - (e) Spill Response Procedures

B. **Training for Non-Routine Tasks**

Periodically, employees are required to perform non-routine tasks which may involve hazardous materials. Before starting work on such projects, affected employees shall be given information by their supervisor about the hazards to which they may be exposed.

C. **Specialized Training**

Specialized training shall also be provided on an as-needed basis as new hazards are introduced into the workplace and for hazards that are newly discovered (e.g., from revised MSDS information).

D. **Recurring Training**

On-going training will be provided to employees. The frequency of this training is designed to maintain a heightened level of hazardous material awareness. Hazardous Material awareness training should be conducted at least annually.

## **HAZARDOUS MATERIAL INFORMATION**

- A. All purchases of hazardous materials must include the MSDS with delivery.
- B. A list of workplace hazardous materials can be found in MSDS binders/files.
- C. Workplace MSDSs are located in the Right to Know Station in every department and shall be readily available to all employees.
- D. All MSDSs must be fully completed and received either prior to or at the time of the first shipment of any potentially hazardous chemical is purchased from a vendor.

## **WARNINGS & LABELING**

A. All containers of hazardous materials are to be labeled with the following information:

- (1) Complete identity of the material.
- (2) Appropriate hazard warning and safety precautions.
- (3) Name and address of the manufacturer or other responsible party.

B. If a secondary container is used, it must be labeled with either a copy of the original label or with appropriate generic labels.

C. All warnings and labels must be legible, in English, and prominently displayed on containers, or readily available in the work area throughout each work shift.

## **ADDITIONAL INFORMATION**

Further information on this written program, the Hazard Communication Standard, and applicable Material Safety Data Sheets is available at the 845- 569-7340.

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

**RESOLUTION NO.: 181 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION TO REJECT A BID MADE BY EDITH RIVERA  
FOR CITY OWNED PROPERTY AT PUBLIC AUCTION**

**WHEREAS**, this Council did, by Resolution No.:122-2012, of July 16, 2012, authorize the sale of several properties at public auction; and

**WHEREAS**, said public auction was duly held on October 3, 2012; and

**WHEREAS**, Edith Rivera, the high bidder for Parcel No.: 20, 251 Third Street, Section 22, Block 1, Lot 17, has submitted a written request for the purchase to be cancelled and the deposit made at the auction be refunded; and

**WHEREAS**, this Council has determined that rejecting the bid is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, that the bid received for Parcel No.: 20, 251 Third Street, Section 22, Block 1, Lot 17, at the City of Newburgh October 3, 2012 property auction be and is hereby rejected; and

**BE IT FURTHER RESOLVED**, that the City Comptroller be and she is hereby authorized to refund the deposit and buyers premium paid by Edith Rivera.

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

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

**ADOPTED**

**RESOLUTION NO.: 182 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION TO CONFIRM THE SALE OF SEVERAL  
CITY OWNED PROPERTIES AT AUCTION AND  
TO AUTHORIZE THE EXECUTION OF DEEDS  
TO THE RESPECTIVE BUYERS**

**WHEREAS**, this Council did, by Resolution No.:121-2012, of July 16, 2012, authorize the sale of several properties at public auction; and

**WHEREAS**, said public auction was duly held on October 3, 2012;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the sale of the following properties to the indicated purchasers be and hereby is confirmed and the City Manager is hereby authorized and directed to execute and deliver a deed to said purchasers upon receipt of the indicated purchase price in cash, money order or bank check, made payable to **THE CITY OF NEWBURGH**, on or before December 3, 2012, subject to the annexed **Terms and Conditions of the Auction**.

<u>Property</u>	<u>S - B - L</u>	<u>Purchaser</u>	<u>Purchase Price</u>
359 Ann Street	34 - 3 - 9	Greca, Inc.	\$32,000.00
61 Campbell Street	23 - 7 - 4	Kathryn Zambito	\$ 5,000.00
87 Carson Avenue	45 - 8 - 10	Steven Rice	\$ 9,500.00
96 Carter Street	22 - 1 - 37	Kareem Earle	\$ 7,500.00
22 City Terrace	29 - 5 - 27	Cristhian Castro	\$ 2,000.00
304 First Street	22 - 6 - 34	Ivan Miller	\$54,000.00
360 First Street	21 - 2 - 15	Vincent Browne	\$ 3,500.00
54 Fowler Avenue	13 - 5 - 22	Cristhian Castro	\$ 1,100.00

<u>Property</u>	<u>S - B - L</u>	<u>Purchaser</u>	<u>Purchase Price</u>
330 Liberty Street	12 - 1 - 16	Percy Smith, Jr.	\$ 2,200.00
374 Liberty Street	10 - 1 - 31	Kathryn Zambito	\$22,500.00
13 Locust Street	25 - 5 - 21	Richard Massimi	\$13,000.00
88 Maple Street	25 - 1 - 52	Cristhian Castro	\$ 7,500.00
255 Powell Avenue	7 - 7 - 18	C. L. Dexter Properties, LLC	\$15,500.00
163 S. William Street	45 - 2 - 2	Jorge A. Arias	\$32,000.00
162 South Street	11 - 3 - 21	Redzep Prelvukic	\$18,500.00
545 South Street	14 - 3 - 9.1	Kathryn Zambito	\$ 7,500.00
7 Van Ness Street	29 - 6 - 3	Fredy Arias	\$38,000.00
144 W. Parmenter Street	38 - 2 - 51	Edith Rivera	\$25,000.00
190 W. Parmenter Street	38 - 1 - 15	Raymond LaChance & Gordon LaChance	\$19,000.00
16 William Street	35 - 3 - 14	Newburgh Property Realty	\$12,000.00
50 William Street	38 - 2 - 36	Chris Schenk	\$ 6,000.00
79 William Street	39 - 2 - 23	All Go To Guys Management, LLC	\$17,000.00
85 William Street	39 - 2 - 21	Agnieszka Pogorzelska	\$22,500.00
87 William Street	39 - 2 - 20	Francisco Mendoza	\$10,500.00
122 William Street	44 - 3 - 17	Monique Bowman	\$10,000.00
135 Wisner Avenue	13 - 5 - 10	Edith Rivera	\$49,500.00

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

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

**ADOPTED**

18-12

**Terms and Conditions of the Auction**  
**DATE: October 3, 2012**  
**TIME: 11:00 A.M.**  
**LOCATION: Homewood Suites**  
**Newburgh N.Y. 12550**

**STANDARD TERMS:**

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and most of all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture, except for these properties not acquired by in rem tax foreclosure as follows: 33 City Terrace, Section 29, Block 4, Lot 16 and 251 Third Street, Section 22, Block 1, Lot 17.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; (e) 2009-2010, 2010-2011 and 2011-2012 school taxes, water rents and assessments, and sewer rents and assessments and any other applicable charges (including, but not limited to, omitted and pro rata taxes, demolition charges, interest and penalties); and (f) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the public auction.
4. The properties are sold subject to unpaid school taxes for the tax years of 2009-2010, 2010-2011 and 2011-2012, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2009-2010, 2010-2011 and 2011-2012, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.**

**For all properties other than 16 William Street**, the deed will contain provisions stating that the purchaser is required to either: a) both obtain a building permit within twelve (12) months of the date of the deed and to rehabilitate any existing building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed, or b) complete demolition of such building within twelve (12) months of the date of the deed. Within such eighteen (18) month rehabilitation period, the purchaser must either: i) obtain a Certificate of Occupancy for all buildings on the property, or ii) make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy. The deed shall also require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. The deed shall also require that the property may not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued for rehabilitation of the building or demolition of the building is completed. Failure to comply with any of the requirements in the deed shall cause the title to the property to revert to the City of Newburgh. A written request made to the City Manager for an extension of the twelve (12) month building permit period or the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to obtain a building permit or rehabilitate of up to, but not to exceed, three (3) months.

Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.

For 16 William Street, a Certificate of Appropriateness has been issued by the Architectural Review Commission to permit demolition of the existing building located thereon. The deed to such property shall require that demolition of such building be completed within six (6) months of the deed, and shall also provide that the property may not be conveyed to any other person before demolition of the building is completed; otherwise, title shall revert to the City of Newburgh.

6. A property with no existing building and which is substandard in size under zoning, purchased by an adjoining property owner must be merged with the adjoining property at title closing.
7. Properties identified as 146 Chambers Street, Section 18, Block 5, Lot 29 and 279 Liberty Street, Section 18, Block 5, Lot 8 shall be sold as a package. The deed shall contain a provision that the successful bidder shall combine the premises herein, identified as 146 Chambers Street, Section 18, Block 5, Lot 29 and 279 Liberty Street, Section 18, Block 5, Lot 8, as one lot of record within one (1) year of the date of conveyance.
8. All informational tools, such as slides, tax maps, deeds, photos, auction listings, auction catalogs, auction signs, property record cards, etc., are for identification purposes only and are neither a guarantee nor a warranty as to location, dimensions, parcel use and/or size, or anything else. THE CITY, THE AUCTIONEER, AND THE BROKER MAKE NO WARRANTY EXPRESSED OR IMPLIED IN CONNECTION WITH THIS SALE.
9. The City of Newburgh reserves the right, in its sole discretion, to withdraw from the auction any of the properties listed on the schedule of real property.
10. Notice is hereby given that the properties identified as 61 Campbell Street, Section 23, Block 7, Lot 4; 87 Carson Avenue, Section 45, Block 8, Lot 10; 146 Chambers Street, Section 18, Block 5, Lot 29; 22 City Terrace, Section 29, Block 5, Lot 27; 33 City Terrace, Section 29, Block 4, Lot 16; 279 Liberty Street, Section 18, Block 5, Lot 8; 330 Liberty Street, Section 12, Block 1, Lot 16; 374 Liberty Street, Section 10, Block 1, Lot 31; 163 S. William Street, Section 45, Block 2, Lot 2; 162 South Street, Section 11, Block 3, Lot 21; 81 South Street, Section 19, Block 1, Lot 5; 251 Third Street, Section 22, Block 1, Lot 17; 7-9 Van Ness Street, Section 29, Block 6, Lot 3; 16 William Street, Section 35, Block 3, Lot 14; 50 William Street, Section 38, Block 2, Lot 36; 122 William Street, Section 44, Block 3, Lot 17; 79 William Street, Section 39, Block 2, Lot 23; 85 William Street, Section 39, Block 2, Lot 21; and 87 William Street, Section 39, Block 2, Lot 20 lie within the East End Historic District as designated upon the zoning or tax map. These parcels are being sold subject to all provisions of law applicable thereto and it is the sole responsibility of any bidder to redevelop such parcel so designated in accordance with same. In addition to the foregoing, 16 William Street has been issued a Certificate of Appropriateness by the Architectural Review Commission to permit demolition of the existing building located thereon.
11. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
12. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
13. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Properties may contain paint or other similar surface coating material containing lead. Purchasers shall be responsible for the correction of such conditions when required by applicable law. Properties also may contain other environmental hazards. Purchasers shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchasers shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Bidder acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Bidder also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.

#### AT THE AUCTION

14. All bidders are required to register and provide suitable personal identification, such as a driver's license and passport, at registration. Auctioneer reserves the right to decline registration if identification is not sufficient. Individuals, other than lawyers, acting on behalf of others, not in attendance at the auction, must produce a "Power of Attorney" duly executed and notarized. Incorporated entities, (Inc. , Corp., LLC, etc.) are required to provide a corporate resolution with a corporate seal affixed where applicable, authorizing the purchase of real property, prior to the transfer of title, and are encouraged to provide same at registration,
15. All bidders are required to use the bidder number issued to them for all purposes associated with the auction. A bidder may not bid on behalf of a party who is on the prohibited bidder list. A party will be added to such list if he has defaulted in payment of a purchase price or taxes following a purchase. Previously defaulting parties are not allowed to bid.
16. The former owner of the property, or his agent, shall not be permitted to bid on the property or purchase same at the public auction, unless the amount exceeds the amount of tax arrears. If the former owner reacquires the property, all liens existing prior to the foreclosure, will be reinstated and the purchaser (former owner) must sign an agreement to reinstate the liens.
17. The auctioneer's decision regarding any disputes is final, and the auctioneer reserves the right to reject any bid that is not an appreciable advancement over the preceding bid.
18. The Successful Bidder will execute an Offer to Purchase form at the auction for each property he/she is the successful bidder on. The approval of each bid by Resolution of the Newburgh City Council will bind the bidder only and will not constitute a Contract of Sale and the City reserves the right to reject any bid prior to the closing of title and the recording of the deed.
19. The Successful Bidder shall provide information necessary to complete and shall execute the necessary forms and documents required for recording the deed in the Orange County Clerk's Office. The bidder executing the auction terms and conditions of sale may not assign or otherwise transfer his right to complete the bid, unless the City agrees in writing. The deed prepared will be in the name of the successful bidder (and spouse) only. No third party bidding will be accepted, unless the bidder identifies that he is bidding as an agent for a disclosed principal, or unless the bidder is a lawyer.
20. The Successful Bidder shall be responsible for the payment of an eleven percent (11%) buyer's premium (1% buyer's premium discount for cash and other guaranteed funds) in addition to the accepted purchase price, an advertising fee of 1.5% of the bid price, and the closing fees/costs. The "buyer's premium" is the fee/commission earned by the auctioneer. Accepted purchase price is the amount of the bid by the highest bidder, which has been approved by the Newburgh City Council.
21. All required deposits must be paid in full for all successful bids immediately upon being declared the successful bidder. Any successful bidder, who fails to tender the deposit, will be forbidden to participate in this or any other auction. Any parcels which the City did not receive deposits for, per these terms and conditions, will be considered to be defaulted, and the bidder will be disqualified from further bidding. Furthermore, upon a default in payment for any one parcel, either during the auction or subsequent thereto, the bidder shall not be permitted to purchase any other parcel(s) bid on, and any deposit monies paid thereon will be forfeited to the City. Additionally, if a declared high bidder at the auction leaves the auction without making the required down payment, he/she will be prohibited from participating at future auctions held by NYSAuctions.com, Haroff Auction & Realty, Inc., Absolute Auctions & Realty, Inc., and the City of Newburgh reserves the right to take legal action against this high bidder.
22. The terms "bidder", "highest bidder" and "successful bidder" shall all have the same meaning.
23. \$1,000.00 or 20% of the total contract price (total contract price is the combination of the high bid and the buyer's premium, as defined in Section 23 of these terms and conditions), whichever is higher, shall be paid as a down payment on the day of the auction upon execution of an Offer to Purchase Form. Total contract prices selling for less than \$1,000.00 must be paid in full at auction, including all closing costs will be paid with the down payment on the day of the auction for each parcel; to wit; (a) New York State Transfer Tax [\$2.00 for each \$500.00 of the purchase/bid price]; (b) Filing Fee for the Real Property Transfer Report [\$125.00 for residential and \$250 for commercial]; (c) Filing Fee for combined Gains Transfer Tax Affidavit [\$5.00]; and (d) all fees required by the Orange County Clerk for recording of the deed [\$40.00 to record one page deed; \$5.00 for each additional page; and \$.50 for any cross reference]. *Closing costs may be subject to an increase in fees as required by law, without notice.* All

recording costs and transfer taxes shall be paid by the purchaser. All deposits must be made in credit/debit card (Master Card or VISA), cash or guaranteed funds (bank checks/tellers checks/cashiers check) made payable to the "City of Newburgh Comptroller" and drawn on banks insured by the Federal Deposit Insurance Corporation (FDIC). No exceptions. Wire transfers will not be accepted. The City Comptroller may refund overage of a deposit made in excess of the total contract price plus closing costs/fees once the funds have cleared, or apply said sum to the balance owing on the purchase price.

#### AFTER THE AUCTION

24. All bids shall be subject to approval by the Newburgh City Council, which shall have the right, in the Council's sole discretion, to reject any bid for any reason whatsoever.
25. The entire balance of the accepted purchase price, the buyer's premium as defined in Section 19 of these terms and conditions, and all closing costs/fees must be paid by cash or guaranteed funds to the City of Newburgh Comptroller's Office on or before December 3, 2012. *The City of Newburgh does not accept credit card payments for the balance of the purchase price, buyer's premium and closing costs/fees after the date of the auction. The City is not required to send notice of acceptance or any other notice to a purchaser. If the purchaser fails to pay the balance of the purchase price as herein provided, the deposit shall be forfeited.* The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. In addition, should any bidder fail to close within the time set forth above, the entire deposit shall be forfeited to the City as liquidated damages without further notice to the bidder. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
26. Previously defaulting parties from prior auctions or other sales of city property are not allowed to bid. If a purchaser owes any outstanding and delinquent taxes to City of Newburgh, those delinquent taxes must be paid in full prior to closing on any purchases made at this auction. Failure to comply with this provision will be grounds for default and forfeiture of any deposits paid.
27. If the successful bidder fails to tender such amount due by the close of business on December 3, 2012, then, the City may, but is not obligated to offer any unsold property to the second highest bidder. All terms and conditions for the sale set forth herein above shall apply to the second highest bidder and/or any other purchaser.
28. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchasers agree that they shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
29. All sales shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, its heirs, success or assigns, against City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty arising from this sale.
30. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
31. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

32. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
33. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
34. The successful purchaser on each auction parcel must remove the auction sign within seven (7) days after the recording of the deed.
35. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

**RESOLUTION NO.: 183 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION TO CONFIRM THE SALE OF A  
CITY OWNED PROPERTY AT AUCTION AND  
TO AUTHORIZE THE EXECUTION OF A DEED  
TO THE RESPECTIVE BUYER**

**WHEREAS**, this Council did, by Resolution No.:122-2012, of July 16, 2012, authorize the sale of several properties at public auction; and

**WHEREAS**, said public auction was duly held on October 3, 2012;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is hereby authorized and directed to execute and deliver a deed to said purchaser upon receipt of the indicated purchase price in cash, money order or bank check, made payable to **THE CITY OF NEWBURGH**, on or before December 3, 2012, subject to the annexed **Terms and Conditions of the Auction**.

<u>Property</u>	<u>S - B - L</u>	<u>Purchaser</u>	<u>Purchase Price</u>
33 City Terrace	29 - 4 - 16	Cristhian Castro	\$ 1,000.00

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

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

**ADOPTED**

18-12

**Terms and Conditions of the Auction**  
**DATE: October 3, 2012**  
**TIME: 11:00 A.M.**  
**LOCATION: Homewood Suites**  
**Newburgh N.Y. 12550**

**STANDARD TERMS:**

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and most of all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture, except for these properties not acquired by in rem tax foreclosure as follows: 33 City Terrace, Section 29, Block 4, Lot 16 and 251 Third Street, Section 22, Block 1, Lot 17.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; (e) 2009-2010, 2010-2011 and 2011-2012 school taxes, water rents and assessments, and sewer rents and assessments and any other applicable charges (including, but not limited to, omitted and pro rata taxes, demolition charges, interest and penalties); and (f) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the public auction.
4. The properties are sold subject to unpaid school taxes for the tax years of 2009-2010, 2010-2011 and 2011-2012, and also subject to all school taxes levied subsequent to the date of the City Council resolution authorizing the sale. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2009-2010, 2010-2011 and 2011-2012, and subsequent levies up to the date of the closing. Upon the closing, the properties shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.**

**For all properties other than 16 William Street**, the deed will contain provisions stating that the purchaser is required to either: a) both obtain a building permit within twelve (12) months of the date of the deed and to rehabilitate any existing building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed, or b) complete demolition of such building within twelve (12) months of the date of the deed. Within such eighteen (18) month rehabilitation period, the purchaser must either: i) obtain a Certificate of Occupancy for all buildings on the property, or ii) make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy. The deed shall also require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. The deed shall also require that the property may not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued for rehabilitation of the building or demolition of the building is completed. Failure to comply with any of the requirements in the deed shall cause the title to the property to revert to the City of Newburgh. A written request made to the City Manager for an extension of the twelve (12) month building permit period or the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to obtain a building permit or rehabilitate of up to, but not to exceed, three (3) months.

Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.

For 16 William Street, a Certificate of Appropriateness has been issued by the Architectural Review Commission to permit demolition of the existing building located thereon. The deed to such property shall require that demolition of such building be completed within six (6) months of the deed, and shall also provide that the property may not be conveyed to any other person before demolition of the building is completed; otherwise, title shall revert to the City of Newburgh.

6. A property with no existing building and which is substandard in size under zoning, purchased by an adjoining property owner must be merged with the adjoining property at title closing.
7. Properties identified as 146 Chambers Street, Section 18, Block 5, Lot 29 and 279 Liberty Street, Section 18, Block 5, Lot 8 shall be sold as a package. The deed shall contain a provision that the successful bidder shall combine the premises herein, identified as 146 Chambers Street, Section 18, Block 5, Lot 29 and 279 Liberty Street, Section 18, Block 5, Lot 8, as one lot of record within one (1) year of the date of conveyance.
8. All informational tools, such as slides, tax maps, deeds, photos, auction listings, auction catalogs, auction signs, property record cards, etc., are for identification purposes only and are neither a guarantee nor a warranty as to location, dimensions, parcel use and/or size, or anything else. THE CITY, THE AUCTIONEER, AND THE BROKER MAKE NO WARRANTY EXPRESSED OR IMPLIED IN CONNECTION WITH THIS SALE.
9. The City of Newburgh reserves the right, in its sole discretion, to withdraw from the auction any of the properties listed on the schedule of real property.
10. Notice is hereby given that the properties identified as 61 Campbell Street, Section 23, Block 7, Lot 4; 87 Carson Avenue, Section 45, Block 8, Lot 10; 146 Chambers Street, Section 18, Block 5, Lot 29; 22 City Terrace, Section 29, Block 5, Lot 27; 33 City Terrace, Section 29, Block 4, Lot 16; 279 Liberty Street, Section 18, Block 5, Lot 8; 330 Liberty Street, Section 12, Block 1, Lot 16; 374 Liberty Street, Section 10, Block 1, Lot 31; 163 S. William Street, Section 45, Block 2, Lot 2; 162 South Street, Section 11, Block 3, Lot 21; 81 South Street, Section 19, Block 1, Lot 5; 251 Third Street, Section 22, Block 1, Lot 17; 7-9 Van Ness Street, Section 29, Block 6, Lot 3; 16 William Street, Section 35, Block 3, Lot 14; 50 William Street, Section 38, Block 2, Lot 36; 122 William Street, Section 44, Block 3, Lot 17; 79 William Street, Section 39, Block 2, Lot 23; 85 William Street, Section 39, Block 2, Lot 21; and 87 William Street, Section 39, Block 2, Lot 20 lie within the East End Historic District as designated upon the zoning or tax map. These parcels are being sold subject to all provisions of law applicable thereto and it is the sole responsibility of any bidder to redevelop such parcel so designated in accordance with same. In addition to the foregoing, 16 William Street has been issued a Certificate of Appropriateness by the Architectural Review Commission to permit demolition of the existing building located thereon.
11. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
12. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
13. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Properties may contain paint or other similar surface coating material containing lead. Purchasers shall be responsible for the correction of such conditions when required by applicable law. Properties also may contain other environmental hazards. Purchasers shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchasers shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Bidder acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Bidder also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.

#### AT THE AUCTION

14. All bidders are required to register and provide suitable personal identification, such as a driver's license and passport, at registration. Auctioneer reserves the right to decline registration if identification is not sufficient. Individuals, other than lawyers, acting on behalf of others, not in attendance at the auction, must produce a "Power of Attorney" duly executed and notarized. Incorporated entities, (Inc. , Corp., LLC, etc.) are required to provide a corporate resolution with a corporate seal affixed where applicable, authorizing the purchase of real property, prior to the transfer of title, and are encouraged to provide same at registration,
15. All bidders are required to use the bidder number issued to them for all purposes associated with the auction. A bidder may not bid on behalf of a party who is on the prohibited bidder list. A party will be added to such list if he has defaulted in payment of a purchase price or taxes following a purchase. Previously defaulting parties are not allowed to bid.
16. The former owner of the property, or his agent, shall not be permitted to bid on the property or purchase same at the public auction, unless the amount exceeds the amount of tax arrears. If the former owner reacquires the property, all liens existing prior to the foreclosure, will be reinstated and the purchaser (former owner) must sign an agreement to reinstate the liens.
17. The auctioneer's decision regarding any disputes is final, and the auctioneer reserves the right to reject any bid that is not an appreciable advancement over the preceding bid.
18. The Successful Bidder will execute an Offer to Purchase form at the auction for each property he/she is the successful bidder on. The approval of each bid by Resolution of the Newburgh City Council will bind the bidder only and will not constitute a Contract of Sale and the City reserves the right to reject any bid prior to the closing of title and the recording of the deed.
19. The Successful Bidder shall provide information necessary to complete and shall execute the necessary forms and documents required for recording the deed in the Orange County Clerk's Office. The bidder executing the auction terms and conditions of sale may not assign or otherwise transfer his right to complete the bid, unless the City agrees in writing. The deed prepared will be in the name of the successful bidder (and spouse) only. No third party bidding will be accepted, unless the bidder identifies that he is bidding as an agent for a disclosed principal, or unless the bidder is a lawyer.
20. The Successful Bidder shall be responsible for the payment of an eleven percent (11%) buyer's premium (1% buyer's premium discount for cash and other guaranteed funds) in addition to the accepted purchase price, an advertising fee of 1.5% of the bid price, and the closing fees/costs. The "buyer's premium" is the fee/commission earned by the auctioneer. Accepted purchase price is the amount of the bid by the highest bidder, which has been approved by the Newburgh City Council.
21. All required deposits must be paid in full for all successful bids immediately upon being declared the successful bidder. Any successful bidder, who fails to tender the deposit, will be forbidden to participate in this or any other auction. Any parcels which the City did not receive deposits for, per these terms and conditions, will be considered to be defaulted, and the bidder will be disqualified from further bidding. Furthermore, upon a default in payment for any one parcel, either during the auction or subsequent thereto, the bidder shall not be permitted to purchase any other parcel(s) bid on, and any deposit monies paid thereon will be forfeited to the City. Additionally, if a declared high bidder at the auction leaves the auction without making the required down payment, he/she will be prohibited from participating at future auctions held by NYSAuctions.com, Haroff Auction & Realty, Inc., Absolute Auctions & Realty, Inc., and the City of Newburgh reserves the right to take legal action against this high bidder.
22. The terms "bidder", "highest bidder" and "successful bidder" shall all have the same meaning.
23. \$1,000.00 or 20% of the total contract price (total contract price is the combination of the high bid and the buyer's premium, as defined in Section 23 of these terms and conditions), whichever is higher, shall be paid as a down payment on the day of the auction upon execution of an Offer to Purchase Form. Total contract prices selling for less than \$1,000.00 must be paid in full at auction, including all closing costs will be paid with the down payment on the day of the auction for each parcel; to wit; (a) New York State Transfer Tax [\$2.00 for each \$500.00 of the purchase/bid price]; (b) Filing Fee for the Real Property Transfer Report [\$125.00 for residential and \$250 for commercial]; (c) Filing Fee for combined Gains Transfer Tax Affidavit [\$5.00]; and (d) all fees required by the Orange County Clerk for recording of the deed [\$40.00 to record one page deed; \$5.00 for each additional page; and \$.50 for any cross reference]. *Closing costs may be subject to an increase in fees as required by law, without notice.* All

recording costs and transfer taxes shall be paid by the purchaser. All deposits must be made in credit/debit card (Master Card or VISA), cash or guaranteed funds (bank checks/tellers checks/cashiers check) made payable to the "City of Newburgh Comptroller" and drawn on banks insured by the Federal Deposit Insurance Corporation (FDIC). No exceptions. Wire transfers will not be accepted. The City Comptroller may refund overage of a deposit made in excess of the total contract price plus closing costs/fees once the funds have cleared, or apply said sum to the balance owing on the purchase price.

#### AFTER THE AUCTION

24. All bids shall be subject to approval by the Newburgh City Council, which shall have the right, in the Council's sole discretion, to reject any bid for any reason whatsoever.
25. The entire balance of the accepted purchase price, the buyer's premium as defined in Section 19 of these terms and conditions, and all closing costs/fees must be paid by cash or guaranteed funds to the City of Newburgh Comptroller's Office on or before December 3, 2012. *The City of Newburgh does not accept credit card payments for the balance of the purchase price, buyer's premium and closing costs/fees after the date of the auction. The City is not required to send notice of acceptance or any other notice to a purchaser. If the purchaser fails to pay the balance of the purchase price as herein provided, the deposit shall be forfeited.* The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. In addition, should any bidder fail to close within the time set forth above, the entire deposit shall be forfeited to the City as liquidated damages without further notice to the bidder. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
26. Previously defaulting parties from prior auctions or other sales of city property are not allowed to bid. If a purchaser owes any outstanding and delinquent taxes to City of Newburgh, those delinquent taxes must be paid in full prior to closing on any purchases made at this auction. Failure to comply with this provision will be grounds for default and forfeiture of any deposits paid.
27. If the successful bidder fails to tender such amount due by the close of business on December 3, 2012, then, the City may, but is not obligated to offer any unsold property to the second highest bidder. All terms and conditions for the sale set forth herein above shall apply to the second highest bidder and/or any other purchaser.
28. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchasers agree that they shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
29. All sales shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, its heirs, success or assigns, against City of Newburgh and/or Haroff Auction & Realty and Absolute Auction & Realty arising from this sale.
30. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
31. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.

32. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
33. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
34. The successful purchaser on each auction parcel must remove the auction sign within seven (7) days after the recording of the deed.
35. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 184 - 2012

OF

OCTOBER 22, 2012

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-  
ENTRY FROM A DEED ISSUED TO TANYA MAISONET  
TO THE PREMISES KNOWN AS 93 CHAMBERS STREET  
(SECTION 23, BLOCK 3, LOT 8)**

**WHEREAS**, on May 5, 1999, the City of Newburgh conveyed property located at 93 Chambers Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 23, Block 3, Lot 8, to Tanya Maisonet; and

**WHEREAS**, the law firm of Sweeney, Gallo, Reich & Bolz, LLP, on behalf of their client and current property owner Fannie Mae a/k/a Federal National Mortgage Association has requested a release of the restrictive covenants contained in said deed; and

**WHEREAS**, the appropriate departments have reviewed their files and recommends such release be granted; and

**WHEREAS**, this Council believes it is in the best interest of the City of Newburgh to grant such request;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3 and 4 of the aforementioned deed.

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

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

**ADOPTED**



**RESOLUTION NO.: 185 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE AN AGREEMENT WITH  
COLLECTION BUREAU HUDSON VALLEY, INC. ("CB/HV")  
TO PROVIDE FOR COLLECTION SERVICES**

**WHEREAS**, the City of Newburgh wishes to enter into the attached Collection Agreement with Collection Bureau Hudson Valley, Inc. ("CB/HV"); and

**WHEREAS**, this agreement will authorize CB/HV to commence collection procedures against debtors submitted for collection; and

**WHEREAS**, the fee for the agreement will be Thirty (30%) Percent of all monies collected; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into and execute the attached agreement to provide for collection services with Collection Bureau Hudson Valley, Inc. in the general form attached hereto, with such other terms and conditions as may be required by Corporation Counsel and the City Manager, same as being in the best interest of the City of Newburgh.

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

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

**ADOPTED**

185-12



Collection Bureau Hudson Valley, Inc

155 North Plank Road • P.O. Box 831 • Newburgh, NY 12550-0831 • Phone 845 561-6880 • 800 745-1395 • Fax 845 913-7403

### COLLECTION AGREEMENT

We (Client) hereby authorize Collection Bureau Hudson Valley, Inc. (CBHV) to commence collection procedures against all debtors submitted for collection. Client will submit a copy of an invoice or statement for each account along with the corresponding debtor information.

**CLIENT** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

**CITY** \_\_\_\_\_ **STATE** \_\_\_\_\_ **ZIP** \_\_\_\_\_

**TELEPHONE NO.** \_\_\_\_\_ **CONTACT PERSON** \_\_\_\_\_

**FEE SCHEDULE:** The commission on all accounts will be 30% of all monies paid regardless of size, age or legal action taken on account.

- CBHV normally acknowledges receipt of your accounts with in five working days
- CBHV will provide all periodic, on-demand and custom reports at no charge
- CBHV never charges you unless we collect

In the event legal action is brought against the client (The City of Newburgh) do to the actions of Collection Bureau of the Hudson Valley Inc., the client would be covered under CBHV's Errors and Omissions/Professional Liability.

CBHV will maintain a \$2,000,000 E & O policy.

Client hereby authorizes CBHV to employ an attorney to represent the Client. The client expressly authorizes CBHV to act in place of the Client when dealing with the attorney and authorizes CBHV to receive any remittance less attorney fees. If CBHV files suit on your accounts, CBHV will advance all legal fees, and is entitled to all monies over and above the principal amount sued for. On accounts requiring legal action, Client will receive written notice for authorization to litigate.

Client hereby authorizes CBHV to endorse for deposit in Clients name and on its behalf remittances received on all accounts. All checks, notes, drafts or other for payment will be deposited into CBHV's trust account. CBHV will remit all monies due client by the end of the month, along with an itemized statement.



Collection Bureau Hudson Valley, Inc

155 North Plank Road • P.O. Box 831 • Newburgh, NY 12550-0831 • Phone 845 561-6880 • 800 745-1395 • Fax 845 913-7403

It is understood that upon acknowledgement, CBHV is to receive our commission on all monies collected by us, paid to you or any other agent, by debtor or third party. Upon acknowledgement, accounts shall remain with CBHV for 12 months unless a mutual agreement is made to return an account to Client prior to that time.

Unless otherwise expressly provided herein, all notices required or permitted under the Trial Services Agreement or this Addendum shall be in writing and shall be transmitted by hand or by U.S. Postal Service or an overnight express service, addressed as follows:

If to the City:                      City of Newburgh  
   Office of the City Manager  
   83 Broadway, City Hall  
   Newburgh, New York 12550

With a copy to:                      City of Newburgh  
   Office of the Corporation Counsel  
   83 Broadway, City Hall  
   Newburgh, New York 12550

If to CBHV:                              Collection Bureau of the Hudson valley  
   155 North Plank Road  
   Newburgh, New York 12550

This Agreement, contains the entire agreement between the parties as to subject matter herein and supersedes all prior agreements whether oral or written between the parties hereto. This Agreement may be modified only by a written instrument signed by the parties.

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_ DATE \_\_\_\_\_

**RESOLUTION NO.: 186 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT WITH COMPUTEL CONSULTANTS  
TO PROVIDE UTILITY BILLING ANALYSIS SERVICES  
ON BEHALF OF THE CITY OF NEWBURGH**

**WHEREAS**, the City of Newburgh wishes to enter into the attached Consulting Agreement with Computel Consultants ("COMPUTEL") to provide Utility Billing Analysis Services for NYCOM Member Municipalities; and

**WHEREAS**, this agreement will authorize COMPUTEL to review the City's telephone, electric (including street lighting), natural gas accounts to identify, correct and secure funds for overcharges and to review the Cable Television Franchise agreements to identify underpayments of franchise fees during the prior six-year time period; and

**WHEREAS**, it is in the best interests of the City to retain the professional services of COMPUTEL to provide utility billing analysis services on a one time fee of forty (40%) percent of any and all recovered refunds and/or credits;

**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 in a Consulting Agreement in the general form attached hereto, with such other terms and conditions as may be required by Corporation Counsel and the City Manager, same as being in the best interest of the City of Newburgh with Computel Consultants to provide professional services in connection with utility billing analysis services on behalf of the City of Newburgh for a one time fee of forty (40%) percent of any and all recovered refunds and/or credits.

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

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

**ADOPTED**

**RESOLUTION NO. 187\_ -2012**

**OF**

**OCTOBER 22, 2012**

**BOND RESOLUTION OF THE CITY OF  
NEWBURGH, NEW YORK, ADOPTED  
OCTOBER 22, 2012, AUTHORIZING  
EMERGENCY RECONSTRUCTION OF THE  
WEST TRUNK SEWER MAIN AND RELATED  
IMPROVEMENTS IN THE CITY, STATING  
THE ESTIMATED TOTAL COST THEREOF IS  
\$9,144,000, APPROPRIATING SAID AMOUNT  
THEREFOR, AND AUTHORIZING THE  
ISSUANCE OF NOT TO EXCEED \$9,144,000  
BONDS OF SAID CITY TO FINANCE SAID  
APPROPRIATION.**

**THE CITY COUNCIL OF THE CITY OF NEWBURGH, IN THE  
COUNTY OF ORANGE, NEW YORK, HEREBY RESOLVES** (by the favorable  
vote of not less than two-thirds of all the members of said City Council) **AS  
FOLLOWS:**

Section 1. The City of Newburgh, in the County of Orange, New York (herein called the "City"), is hereby authorized to finance the cost of emergency reconstruction of the West Trunk sewer main, and related improvements, at the estimated maximum cost of \$9,144,000, including but not limited to access roadway, pipe replacement, by pass pumping system, access manholes, pipe lining, restoration and stabilization of the Quassaick Creek stream bank. The estimated maximum cost of said specific object or purpose, including preliminary costs and costs incidental thereto and to the financing thereof, is \$9,144,000 and said amount is hereby appropriated therefor. The plan

of financing includes the issuance of not to exceed \$9,144,000 bonds of the City to finance said appropriation, and the levy and collection of taxes on all the taxable real property in the City to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

Section 2. Bonds of the City in the aggregate principal amount of \$9,144,000 are hereby authorized to be issued pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called "Law"), to finance the appropriation referred to herein.

Section 3. The period of probable usefulness of the specific object or purpose for which said \$9,144,000 bonds herein authorized are to be issued, within the limitations of Section 11.00 a. 4 of the Law, is forth (40) years.

Section 4. The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the City for expenditures made after the effective date of this resolution for the purpose or purposes for which said bonds are authorized. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

Section 5. Each of the bonds authorized by this resolution and any bond anticipation notes issued in anticipation of the sale of said bonds shall

contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation of said bonds shall be general obligations of the City, payable as to both principal and interest by general tax upon all the taxable real property within the City. The faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds and provision shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the City Council relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, and relative to executing agreements for credit enhancement, are hereby delegated to the Comptroller/Director of Finance, the chief fiscal officer of the City.

Section 7. Pursuant to the provisions of section 16 of Chapter 223 of the New York Laws of 2010, the City is authorized to include in this resolution the following pledge and agreement of the State of New York (herein called the "State") contained in said Section 16:

“The state does hereby pledge to and agree with the holders of any bonds, notes or other obligations issued by the city during the effective period of this act and secured by such a pledge that the state will not limit, alter or impair the rights hereby vested in the city to fulfill the terms of any agreements made with such holders pursuant to this act, or in any way impair the rights and remedies of such holders or the security for such bonds, notes or other obligations until such bonds, notes or other obligations together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged.”

Section 8. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such resolution or a summary hereof, are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- (c) such obligations are authorized in violation of the provisions of the constitution.

Section 9. This Bond Resolution shall take effect immediately, and the City Clerk is hereby authorized and directed to publish the foregoing resolution, in summary, together with a Notice attached in substantially the form prescribed by §81.00 of the Law in "*The Sentinel*," "*The Mid Hudson Times*," and "*The Hudson Valley Press*," three newspapers each having a general circulation in the City and hereby designated the official newspapers of said City for such publication.

**Councilman Brown said that he would like to make a motion to table this. He thinks that it should be sent out for an RFP to see what it would cost for an outside contractor to do the work that is in this resolution and what it would cost to put in a new line parallel to the old line. This is not an emergency as the emergency has just been covered so he thinks that we have time to at least see what else is out there before we spend nine million dollars.**

**City Manager, Richard Herbek, said that he thinks there might be time constraints that need to be considered here.**

**City Comptroller, Cheryl Gross, clarified that this is a resolution authorizing the borrowing of the funds. It is not providing for any of the services other than what has been completed for the emergency. There will be bids put out for the rest of the work.**

**Mayor Kennedy said that nine million doesn't just cover the emergency. She thought that the emergency was 1.2 million.**

**City Comptroller, Cheryl Gross, said that the E.F.C. (Environmental Facility Corporation) needed to know what the estimate of the whole cost of the work would be. We had to give them the estimated cost to repair and it doesn't matter who is doing the work. They will only borrow right now what we have spent in emergency. Once we get the bids in then they will go to Bond for us for the amount of the bids for the work to be completed.**

Mayor Kennedy said that this is an amount not to exceed but it could be less than if we get bids under it.

City Comptroller, Cheryl Gross, said that is correct.

Councilman Dillard asked what the time restraints are.

City Comptroller, Cheryl Gross, said that we have spent, she believes, 2.1 million for the emergencies of the two and they are going to borrow that. They are trying to get it into the December loan for the BAN but everything has to be to them, she believes, by next Monday. We have been working very hard to get them the paperwork and then it goes to their committees to make sure that we do qualify and that we are a hardship case. They are only going to borrow for one year for the amount we have spent in the emergency and then in that year we are supposed to be getting the bids, specs and such and then they will go out to Bond based on that.

Councilman Brown said that he withdraws his motion to table.

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

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

ADOPTED

**RESOLUTION NO.: 188 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION AUTHORIZING THE CITY MANAGER OR  
THE CHIEF OF POLICE AS MANAGER'S DESIGNEE  
TO EXECUTE AN AGREEMENT WITH THE COUNTY OF ORANGE  
CONFIRMING CITY OF NEWBURGH PARTICIPATION  
IN THE STOP-DWI PROGRAM  
FOR THE PERIOD OF OCTOBER 14, 2012 TO JANUARY 1, 2013  
PROVIDING  
THE CITY WITH AN AMOUNT NOT TO EXCEED \$2,818.00**

**WHEREAS**, the County of Orange (hereinafter "County") has provided the City of Newburgh (hereinafter "City") with an agreement, to provide for the funding of the STOP-DWI Program within the City of Newburgh for the period of October 14, 2012 and ending January 1, 2013, which includes Thanksgiving, Christmas and the New Year's enforcement campaigns; and

**WHEREAS**, the County shall reimburse the City of Newburgh for increased patrol and court time in connection with enhanced enforcement of laws prohibiting driving while intoxicated; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manger or the Chief of Police as Manager's designee be and he is hereby authorized to execute an agreement with the County of Orange confirming the City's participation in the STOP-DWI Program in order to fund the additional cost of stepped-up police patrols and related court appearances for the period of October 14, 2012 through January 1, 2013, not to exceed \$2,818.00

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

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

**ADOPTED**

**RESOLUTION NO.: 189 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION AUTHORIZING THE CITY MANAGER OR  
THE CHIEF OF POLICE AS MANAGER'S DESIGNEE  
TO ENTER INTO AN INTERMUNICIPAL AGREEMENT BETWEEN  
THE COUNTY OF ORANGE AND THE CITY OF NEWBURGH  
IN CONNECTION WITH THE STOP DWI PROGRAM  
TO ACCEPT AN AMOUNT NOT TO EXCEED \$1,000.00  
WHICH MAY BE USED SOLELY FOR THE PURCHASE OF EQUIPMENT**

**WHEREAS**, the City of Newburgh wishes to enter into an Inter-Municipal Agreement with the County of Orange, a copy of which is attached hereto and made a part hereof, in connection with the Stop DWI Program; and

**WHEREAS**, the County shall provide the City an amount not to exceed \$1,000.00 solely for the purchase of equipment; and

**WHEREAS**, such equipment includes window tint meters, Pocket Jet TraCS printers, Pocket Jet printer car power cables, Pocket Jet 3 printer USB cables, and thermal printer paper; and

**WHEREAS**, this Council has reviewed the attached agreement and has determined that entering into such agreement would be in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he or the Chief of Police as Manager's is hereby authorized to execute an Inter-Municipal Agreement with the County of Orange in connection with the Stop DWI Program to accept an amount not to exceed \$1,000.00 which may be used solely for the purchase of equipment.

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

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

**ADOPTED**

189-12



## INTER-MUNICIPAL AGREEMENT

**THIS INTER-MUNICIPAL AGREEMENT ("IMA")** is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the County of Orange, a County of the State of New York, with its principal offices at 255-275 Main Street, Goshen, New York, by and through its Department of Emergency Services ("COUNTY"), and the CITY OF NEWBURGH of the State of New York, with its principal offices at 55 Broadway, Newburgh, NY 12550 by and through its Police Department ("MUNICIPALITY").

### ARTICLE 1. SCOPE OF AGREEMENT

The COUNTY is a municipal corporation chartered under the authority of the State of New York. Among other powers and duties, the COUNTY, by and through its Department of Emergency Services, administers the COUNTY's Special Traffic Options Program for Driving While Intoxicated in accordance with New York State Vehicle and Traffic Law Section 1197 ("DWI Program"). The purpose of the DWI Program is to coordinate and fund county, town, city, and village efforts to reduce alcohol-related traffic injuries and fatalities. To facilitate this goal the COUNTY and the MUNICIPALITY recognize that proper equipment is essential in providing effective police patrols ensuring safe and sober roadways.

It is the intention of the COUNTY, in order to carry out the goals of the DWI Program, to grant to the MUNICIPALITY the aggregate not to exceed sum of **ONE THOUSAND and 00/100 (\$1000.00)** to be used solely for the purchase or towards the purchase of window tint meters, Pocket Jet TraCS printers, Pocket Jet printer car power cables, Pocket Jet 3 printer USB cables, thermal printer paper ("Equipment"), which purchase must be made no later than December 31, 2012. The expenditure of these funds, the use of the Equipment, and all activity of the MUNICIPALITY relating to such Equipment, shall be in full compliance with the terms and conditions of this IMA and federal, State of New York ("State"), and local laws.

### ARTICLE 2. ADDITIONAL TERMS OF AGREEMENT

The MUNICIPALITY agrees (i) to purchase and utilize the Equipment pursuant to the terms of this IMA; (ii) to carry out the designated and intended purpose(s) of the Equipment; (iii) that the Equipment shall be made available for use regionally by law enforcement for as long as the Equipment is serviceable and in its possession at the time of the request; (iv) that it shall not dispose of

the Equipment without written permission from the COUNTY; and (v) that it shall, at its own cost and expense, maintain, service, and repair the Equipment (as necessary).

The MUNICIPALITY shall, upon receiving due notice from the COUNTY, have the Equipment (and all associated records, including, but not limited to, all books and documents relevant to the care, maintenance and upkeep of the Equipment) available for a physical inspection and/or audit. For purposes of the Article, due notice shall mean a period of time not to exceed five (5) business days.

### ARTICLE 3. PROCUREMENT OF AGREEMENT

The MUNICIPALITY represents and warrants that no person or selling agency has been employed or retained by the MUNICIPALITY to solicit or secure this IMA upon an agreement for, or upon an understanding of, a commission, percentage, a brokerage fee, contingent fee or any other compensation. The MUNICIPALITY 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. The MUNICIPALITY makes such representations and warranties to induce the COUNTY to enter into this IMA and the COUNTY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this IMA without liability, entitling the COUNTY to immediately recover the Equipment from the MUNICIPALITY. This remedy, if effected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY's right to claim damages or to take any other action provided for by law or pursuant to this IMA.

#### **ARTICLE 4. CONFLICT OF INTEREST**

The MUNICIPALITY represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have an interest, and shall not acquire an interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the Equipment herein provided. The MUNICIPALITY further represents and warrants that in the performance of this IMA, 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 COUNTY, nor any person whose salary is payable, in whole or in part, by the COUNTY, 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 IMA or in the proceeds thereof, unless such person (1) is required by the Orange County Ethics Law, as amended from time to time, to submit a Disclosure form to the Orange County Board of Ethics, amends such Disclosure form to include his/her interest in this IMA, or (2) submits such a Disclosure form and (a) discloses his/her interest in this IMA, or (b) seeks a formal opinion from the Orange County Ethics Board as to whether or not a conflict of interest exists.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this IMA without liability, entitling the COUNTY to recover the Equipment. This remedy, if elected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY'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 IMA.

#### **ARTICLE 5. ASSIGNMENT AND SUBCONTRACTING**

No party shall assign any of its rights, interest, or obligations under this IMA, or enter into a sub-contract relating to the Equipment to be purchased under this IMA, without the prior written consent of the COUNTY.

#### **ARTICLE 6. BOOKS AND RECORDS**

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

#### **ARTICLE 7. RETENTION OF RECORDS**

MUNICIPALITY agrees to retain all books, records and other documents relevant to this IMA for six (6) years after the Equipment is returned to the COUNTY or after final disposition of the Equipment. The COUNTY, or any State and/or Federal auditors, and any other persons duly authorized by the COUNTY, shall have full access and the right to examine any of said materials during said period.

#### **ARTICLE 8. AUDIT BY THE COUNTY 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 COUNTY. The MUNICIPALITY shall submit any and all documentation and justification in support of expenditures or fees under this IMA as may be required by the COUNTY, so that it may evaluate the reasonableness of the charges, and the MUNICIPALITY shall make its records available to the COUNTY 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 COUNTY, the State, the federal government, and/or other persons duly authorized by the COUNTY. Such audits may include examination and review of the source and application of all funds whether from the COUNTY and State, the federal government, private sources or otherwise. The MUNICIPALITY shall not be entitled to any interim or final payment under this IMA if any audit requirements and/or requests have not been satisfactorily met.

#### **ARTICLE 9. INDEMNIFICATION**

The MUNICIPALITY agrees to defend, indemnify and hold harmless the COUNTY, its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including reasonable attorney fees and costs of litigation and/or settlement) arising out of any act or omission of the MUNICIPALITY, its employees, representatives, subcontractor, assignees, or agents, relating to this IMA or the Equipment.

#### **ARTICLE 10. TERMINATION**

The COUNTY may, by written notice to the MUNICIPALITY, effective upon mailing, terminate this IMA in whole or in part at any time (i) for the COUNTY's convenience, (ii) upon the failure of the MUNICIPALITY to comply with any of the terms or

conditions of this IMA, or (iii) upon the MUNICIPALITY becoming insolvent or bankrupt.

Upon termination of this IMA, the MUNICIPALITY shall comply with any and all COUNTY closeout procedures, including, but not limited to, (i) accounting for and refunding to the COUNTY within thirty (30) days, any unexpended funds which have been paid and/or transferred to MUNICIPALITY pursuant to this IMA; and (ii) furnishing within thirty (30) days an inventory to the COUNTY of all equipment, appurtenances and property purchased by MUNICIPALITY through or provided under this IMA, and carrying out any COUNTY directive concerning the disposition thereof.

Notwithstanding any other provision of this IMA, the MUNICIPALITY shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of the MUNICIPALITY's breach of the Agreement or failure to perform in accordance with applicable standards.

Any rights and remedies of the COUNTY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this IMA.

**ARTICLE 11. GENERAL RELEASE**

The acceptance by the MUNICIPALITY, or its assignees, of the funds and of the terms of this IMA, shall constitute, and operate as a general release in favor of the COUNTY, from any and all claims of the MUNICIPALITY arising out of the performance of this IMA.

**ARTICLE 12. SET-OFF RIGHTS**

The COUNTY shall have all of its common law, equitable and statutory rights of set-off. These rights

shall include, but are not limited to, the COUNTY's right to withhold for the purposes of set-off any monies otherwise due to the MUNICIPALITY (i) under any other agreement or contract with the COUNTY, including any agreement or contract commencing prior to or after the term of this IMA, or (ii) from the COUNTY by operation of law.

**ARTICLE 13. GOVERNING LAW**

This IMA shall be governed by the laws of the State of New York. The MUNICIPALITY shall utilize all Equipment purchased under this IMA in accordance with applicable provisions of all federal, State, and local laws, rules and regulations as are in effect at the time such Equipment is purchased.

**ARTICLE 14. ENTIRE AGREEMENT**

The rights and obligation of the parties and their respective agents, successors and assignees shall be subject to and governed by this IMA, including Schedule A, which supersedes any other understandings or writings between or among the parties.

**ARTICLE 15. MODIFICATION**

No amendment or modification of any of the terms and/or conditions of this IMA shall be valid unless reduced to writing and signed by both parties. The COUNTY shall not be bound by any changes made to this IMA that is not made in compliance with the above, and which imposes on the COUNTY any financial obligation. Unless otherwise specifically provided for therein, the provisions of this IMA shall apply with full force and effect to any such amendment, modification or change order.

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

**COUNTY OF ORANGE**

**MUNICIPALITY**

By: \_\_\_\_\_  
Edward A. Diana  
County Executive

By: *[Signature]*  
Name: *Michael D. Ferrara*  
Title: *Police Chief*

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

DATE: *9-26-12*

**RESOLUTION NO.: 190 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION REQUESTING AN EXEMPTION FROM COUNTY  
TAXES FOR THE CITY'S RESERVOIR AND FILTER PLANT  
PROPERTIES FOR THE YEAR 2014**

**BE IT RESOLVED**, by the Council of The City of Newburgh, New York, that the City Manager be and he is hereby authorized and directed to request a real property tax exemption from real property taxes to be levied by the County of Orange on all of the City's reservoir and filter plant properties, and the buildings and improvements thereon, and to be constructed thereon in the Town of Newburgh and the Town of New Windsor, pursuant to the provisions of Section 406, subdivision 3, of the Real Property Tax Law of the State of New York.

The requested exemption would include exemption from all taxation, special ad valorem levies and special assessments through December 31, 2014, so long as the subject premises are used for the aforesaid purposes.

The specific properties involved are as follows:

<u>OWNER</u>	<u>MUNICIPALITY</u>	<u>TAX PARCEL NO.</u>
CITY OF NEWBURGH	TOWN OF NEW WINDSOR	4 - 1 - 38
		4 - 1 - 35
		4 - 3 - 1.1
		4 - 1 - 12.2
		4 - 1 - 9.21
		4 - 1 - 10
		32 - 2 - 53
TOWN OF NEWBURGH		75 - 1 - 17
		97 - 3 - 17
		97 - 2 - 22.1
		97 - 3 - 10
		97 - 1 - 44

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

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

**ADOPTED**

**RESOLUTION NO.: 191 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION TO IMPLEMENT A CITY-WIDE  
CURFEW FOR MINORS 16 YEARS OF AGE AND UNDER  
ON OCTOBER 30TH AND 31ST  
FROM 9:00 P.M. TILL 6:00 A.M.**

**WHEREAS**, the City of Newburgh has a general obligation to ensure the safety and welfare of the general population of the City including minors, along with protection of private property; and

**WHEREAS**, October, 30<sup>th</sup> and 31<sup>st</sup> are associated with Halloween related activities, including "Trick or Treating" and other related outdoor activities, some of which might be prejudicial to the safety and welfare of the population and protection of private property; and

**WHEREAS**, the City of Newburgh determines that the passage of a curfew resolution for Halloween and the preceding night will assist in protecting the welfare of minors by reducing the likelihood of their involvement in inappropriate behavior, while aiding parents or guardians of minors entrusted in their care;

**NOW THEREFORE, BE IT RESOLVED:**

**THIS COUNCIL HEREBY DECLARES** a city-wide curfew for minors from 9:00 P.M. until 6:00 A.M. each day, starting at 9:00 p.m. on Tuesday, October 30, 2012, and ending at 6:00 a.m. on Thursday, November 1, 2012; and

**BE IT FURTHER RESOLVED**, this Council urges all parents to inform their children and supervise the implementation of this City-wide curfew so that we may avoid problems and promote the safety, health and welfare of our City's young people and property owners; and

**BE IT FURTHER RESOLVED**, that it shall be a defense to a violation of this curfew that the minor was accompanied by the minor's parent or guardian, engaged in an employment activity, or involved in an emergency or other legally justifiable activity.

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

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

**ADOPTED**

**RESOLUTION NO.: 192 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION AUTHORIZING THE EXECUTION OF  
AN AMENDED LICENSE AGREEMENT EXTENDING THE TERM FOR THE  
USE OF THE STADIUM LOCATED AT DELANO-HITCH RECREATION  
PARK BY THE NEWBURGH HOOK ELITE BOXING CLUB  
AND EBC SPORTS MINISTRY**

**WHEREAS**, this Council, by Resolution No.: 92-2012 of June 18, 2012, authorized the execution of a license agreement with the Newburgh Hook Elite Boxing Club and EBC Sports Ministry for the use of the stadium located at Delano-Hitch Recreation Park for a youth boxing program; and

**WHEREAS**, Newburgh Hook Elite Boxing Club and EBC Sports Ministry has expressed interest in extending the term of said license agreement until June 30, 2013; and

**WHEREAS**, a copy of such amended license agreement is annexed hereto and made a part of this resolution; and

**WHEREAS**, the City Council has examined such amended license agreement and determined it to be in the best interests of the City of Newburgh and its youth to enter into such license 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 and enter into the attached license agreement, in substantially the same form and with other terms as Corporation Counsel may require, on behalf of the City of Newburgh.

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

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

**ADOPTED**

## AMENDED LICENSE AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between:

THE CITY OF NEWBURGH, a municipal corporation having its principal place of business at 83 Broadway, City Hall, Newburgh, New York 12550, hereinafter called the "City"; and

THE NEWBURGH HOOK ELITE BOXING CLUB and EBC SPORTS MINISTRY, c/o Leonard Lee, 70 Johnes Street, Newburgh, New York 12550 hereinafter called "Licensee".

WITNESSETH, that the City and Licensee, for the consideration hereinafter named, agree as follows:

### ARTICLE 1: Term.

This Agreement shall run from June 1, 2012 to June 30, 2013.

### ARTICLE 2: Obligation of the City.

The City shall grant to the Licensee a revocable license to use the municipal stadium located in the Delano-Hitch Recreation Park in the City of Newburgh for a youth boxing program by the Newburgh Hook Elite Boxing Club for the period of time set forth above pursuant to a written schedule to be submitted to and approved in writing by the City Manager or his designee. The City shall provide space for players/participants in a location in the Delano-Hitch Recreation Park to be determined by the City Manager or his designee.

### ARTICLE 3: Obligation of Licensee.

A. The Licensee shall provide the City Manager or his designee a written schedule of all programs and other uses of the facility for the term of the Agreement and failure to do so may result in City canceling any or all such program(s). No programs or other uses may be schedule to start after 8:00 p.m.

B. The Licensee shall pay the cost of all personnel, supplies and equipment necessary and proper for the maintenance of the facility as is required by their use thereof.

C. The Licensee shall, after each day of programs, return the facility to the City on that same day to a clean condition free of all equipment, garbage and debris. Licensee shall clean up all garbage generated in the area designated for use and deposit in proper trash receptacle. The Licensee shall repair all damage incurred to the area designated for

use during the exercise of the license at its own sole expense. Such repairs shall be performed immediately. Licensee agrees that if such damages are not promptly and completely repaired, Licensee shall remain liable for all consequences, direct and indirect, consequential and incidental, to the City resulting from the damages and from the unavailability of such facilities resulting therefrom.

D. The Licensee shall have a representative with authority over all programs and activities present at all times. Licensee shall secure the facility after each use. Noise levels shall be kept at appropriate decibel levels so as not to disturb neighbors.

E. The Licensee shall cooperate with City authorities to provide necessary security and supervision of minors, participating in programs or present as spectators, during the period of this agreement. The Licensee shall be liable for any damage done to the premises by its officers, agents, servant, employees or invitees during the period of this agreement.

#### ARTICLE 4: Payment.

The Licensee shall pay to the City, as and for a fee for the use of the facility during the period of this agreement, ONE THOUSAND (\$1,000.00 AND 00/100) DOLLARS.

#### ARTICLE 5: Insurance.

The Licensee shall not commence any program under this agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the City.

A. Compensation Insurance - The Licensee shall take out and maintain during the life of this agreement such Workers' Compensation Insurance for its employees or members to be assigned to the work hereunder as may be required by New York State Law.

B. General Liability and Property Damage Insurance - The Licensee shall take out and maintain during the life of this agreement such general liability and property damage insurance as shall protect it from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows:

1. General Liability Insurance in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$3,000,000.00 on account of any one occurrence.
2. Property Damage Insurance in an amount not less than \$50,000.00 for damage on account of all occurrences.

The Licensee shall furnish the above insurance to the City and shall also name the City as an additional named insured in said policies. Such insurance shall be maintained in force during the entire term of this contract.

C. Any accident shall be reported to the Office of the City Manager as soon as possible and not later than twenty-four hours from the time of such accident. A detailed written report must be submitted to the City as soon thereafter as possible and not later than three (3) days after the date of such accident.

ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

A. That it is financially solvent and that it is experienced and competent to perform the type of work or to furnish the consideration to be furnished by it; and

B. That it is familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or play or those employed or engaged therein. It is understood and agreed between the parties that the Licensee shall have no right to control the actions of City employees nor any duty to supervise the actions of City employees.

ARTICLE 7: Permits and Regulations.

The Licensee shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

ARTICLE 8: City's Right to Terminate Agreement.

The City shall have the right to stop work or terminate this agreement under the following terms and conditions:

1. (a) The Licensee refuses or fails to perform any of its obligations under this agreement; or
- (b) The Licensee fails to make prompt payment or perform work as required by this agreement; or
- (c) The Licensee fails or refuses to comply with all applicable laws or ordinances; or
- (d) The Licensee is guilty of substantial violation of any provision of this agreement.
- (e) In the event the City elects to stop work or terminate this agreement on any ground or grounds set forth in subparagraphs (a) - (d) of this paragraph, the City shall provide the Licensee with written notice, no less than fourteen (14) days prior

to such stop work or termination of this agreement, of the City's intent to so stop work or terminate this agreement and the ground or grounds therefore. In the event the Licensee shall cure such ground or grounds prior to the date noticed for stop work or termination of this agreement, the City shall not stop work or terminate the agreement on such grounds.

2. The City, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days notice to the Licensee, terminate the agreement with the Licensee.

#### ARTICLE 9: Damages.

It is hereby mutually covenanted and agreed that the relation of the Licensee to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances, whether or not the Licensee, its agents or employees have been negligent. The Licensee shall hold and keep the City free and discharged of and from any and all responsibility and liability of any sort or kind. The Licensee shall assume all responsibility for risks or casualties of every description, for loss, death or injury to persons or property arising out of the nature of the performance, other than those wholly caused by Acts of God or conditions pre-existing this license. The Licensee shall make good any damages that may occur in consequence of the performances or any part of it. The Licensee shall assume all blame, loss and responsibility of any nature by reason of the Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance.

#### ARTICLE 11: Indemnity and Save Harmless Agreement.

A. The Licensee agrees to indemnify and save the City, its officers, agents and employees harmless from any liability imposed upon the City, its officers, agents and/or employees arising from the negligence, active or passive, of the Licensee.

B. The City agrees to indemnify and save the Licensee, its officers, agents and employees harmless from any liability imposed upon the Licensee, its officers, agents and/or employees arising from the negligence, active or passive, of the City.

#### ARTICLE 12: No Assignment.

The Licensee is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement or of its right, title or interest in this agreement or its power to execute this agreement to any other person or corporation without the previous consent in writing of the City.

ARTICLE 13: Required Provisions of Law.

Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this agreement shall be physically amended forthwith to make such insertion.

ARTICLE 14: Notices.

Any and all notices and payments required hereunder shall be addressed as follows or to such other address as may hereafter be designated in writing by either party hereto:

TO: The City of Newburgh  
City Manager  
City Hall, 83 Broadway  
Newburgh, New York 12550  
(845) 569-7301

TO: Newburgh Hook Elite Boxing Club  
c/o Leonard Lee  
70 Johnes Street  
Newburgh, New York 12550  
(845) 857-0612

ARTICLE 15: Waiver.

No waiver of any breach of any condition of the agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

ARTICLE 16: Modification:

This agreement constitutes the complete understanding of the parties. No modification or any provisions thereof shall be valid unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the day and year first above written.

THE CITY OF NEWBURGH

by: \_\_\_\_\_

RICHARD F. HERBEK  
City Manager

NEWBURGH HOOK ELITE BOXING

CLUB

by: \_\_\_\_\_

LEONARD LEE

EBC SPORTS MINISTRY

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

DR. BRUCE DAVIS  
Pastor

Approved as to form:

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

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

**RESOLUTION NO.: 193 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH  
ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL  
QUALITY REVIEW ACT (SEQRA) FOR WEST TRUNK SEWER  
IMPROVEMENTS PROJECT, DECLARING THE PROJECT TO BE A TYPE II  
ACTION, ADOPTING THE ENVIRONMENTAL ASSESSMENT FORM,  
FINDING NO SIGNIFICANT ADVERSE IMPACT ON THE  
ENVIRONMENT AND AUTHORIZING THE CITY MANAGER TO  
EXECUTE ALL SEQRA DOCUMENTS**

**WHEREAS**, the City of Newburgh currently owns, operates and maintains the combined sewer collection system within the City of Newburgh, including the west trunk line sewer;

**WHEREAS**, Cured in Place Pipe Liner has been installed within approximately 1,250 feet of the west trunk sewer as a result of a collapse which occurred on July 16, 2012; and

**WHEREAS**, Cured in Place Pipe Liner has been ordered for approximately 650 feet of additional trunk sewer as a result of a blowout which occurred on October 4, 2012; and

**WHEREAS**, the City of Newburgh intends to assess the condition of the west trunk sewer, make necessary repairs and/or upgrades to an additional 5,700 feet of the west trunk sewer; and

**WHEREAS**, the City of Newburgh must evaluate and determine the scope of the necessary permanent repairs to the west trunk sewer and Quassaick Creek Corridor to the damaged sections set forth above and intends to assess the condition of the remainder of the west trunk sewer and make necessary repairs and/or upgrades to an additional 5,700 feet of the west trunk sewer; and

**WHEREAS**, the City of Newburgh intends to prepare documents necessary to obtain funding through the Environmental Facilities Corporation; and

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

**WHEREAS**, pursuant to the SEQRA Regulations, the City has considered the significance of the potential environmental impacts of the Project by (a) using the criteria specified in Section 617.6 of the SEQRA Regulations, and (b) examining the short EAF for the Project, including the facts and conclusions on Page 1 and 2 of the EAF, together with other available supporting information, to identify the relevant areas of environmental concern and wishes to establish itself as Lead Agency for the Project.

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

1. The City Council of the City of Newburgh hereby declares itself as the Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6;
2. the Project constitutes a "Type II", as the quoted term is defined in the SEQRA Regulations;
3. adopts Part I of the Environmental Assessment Form;
4. determines, based upon an examination of the short EAF and other available supporting information and considering the magnitude and importance of each area of environmental concern, and based on the city's knowledge of the area surrounding the Project, that the Project will not have a significant adverse environmental impact and will not require the preparation of a Draft Environmental Impact Statement;

**BE IT FURTHER RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to sign and file any/and all other documents that may be necessary to complete the SEQRA process for the Project.

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

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

**ADOPTED**

193-12

617.20

Appendix C  
State Environmental Quality Review  
**SHORT ENVIRONMENTAL ASSESSMENT FORM**  
For UNLISTED ACTIONS Only

**PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)**

1. APPLICANT/SPONSOR Barton and Loguidice, P.C.	2. PROJECT NAME West Trunk Sewer Improvements
3. PROJECT LOCATION: Municipality City of Newburgh County Orange	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) The project is located just south of the existing CSX railway and north of Quassaick Creek in the City of Newburgh; see location map attached.	
5. PROPOSED ACTION IS: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input checked="" type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Installation of CIPP lining; installation of manhole structures, clearing and grubbing along sewer easement; investigation of integrity of the West Trunk Sewer; stream bank stabilization and restoration as a result of the sewer collapse in July and October, 2012	
7. AMOUNT OF LAND AFFECTED: Initially <u>4</u> acres    Ultimately <u>4</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: The City Zoning Map shows the area being of heavy commercial and light industrial zoning.	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals: <b>NYSDEC</b> - Freshwater Wetlands Permit, Water Quality Permit, Stream Disturbance; Div. of Dams; Div. of Water; <b>DOH</b> - Project Approval; <b>ACOE</b> ; <b>NYSEFC</b> - Project Financing	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals:	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____	

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

Reset

**PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)**

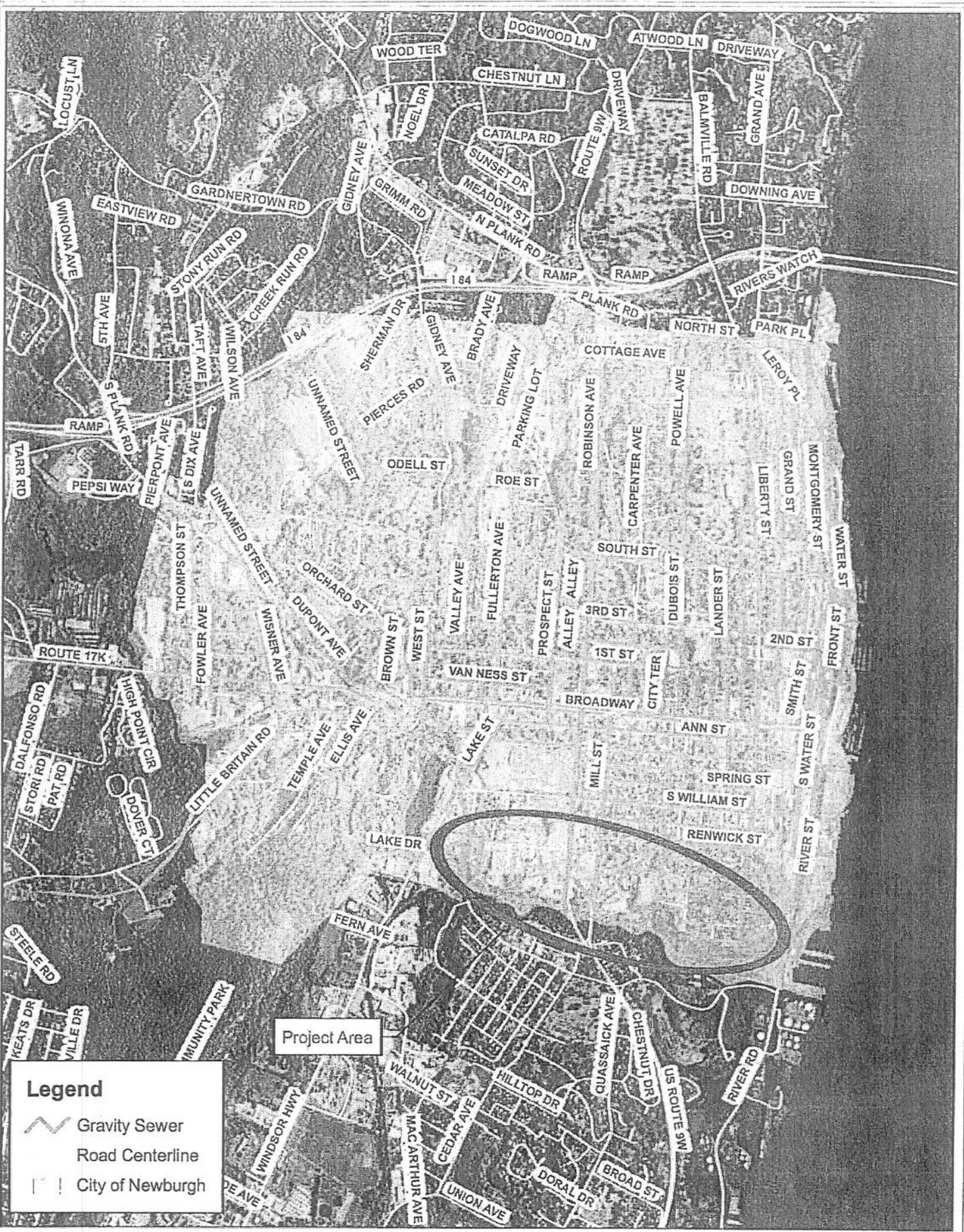
<p>A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4?  <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p>	<p>If yes, coordinate the review process and use the FULL EAF.</p>
<p>B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.  <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p>	
<p>C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)</p> <p>C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:                  Other than temporary disturbances during construction, this project includes the repair of existing infrastructure and is not anticipated to have a negative effect on the environment</p> <p>C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:                  This project includes the repair of existing infrastructure. SHPO has been contacted to ensure that this project will not have an impact on resources, however, only temporary disturbances related to construction activities are anticipated</p> <p>C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:                  The DEC has been contacted to determine if any threatened or endangered animals are in the project area. However, since this project is to repair or replace existing infrastructure, the project is not anticipated to have long term adverse effects.</p> <p>C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:                  This project is to repair existing infrastructure and is not anticipated to alter any current land use, plans or goals</p> <p>C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:                  This project is to repair existing infrastructure, and no subsequent growth is anticipated</p> <p>C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:                  Short-term disruption associated with the construction or repair of existing infrastructure</p> <p>C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:                  None have been identified</p>	
<p>D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?  <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    If Yes, explain briefly:</p>	
<p>E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?  <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No    If Yes, explain briefly:</p>	

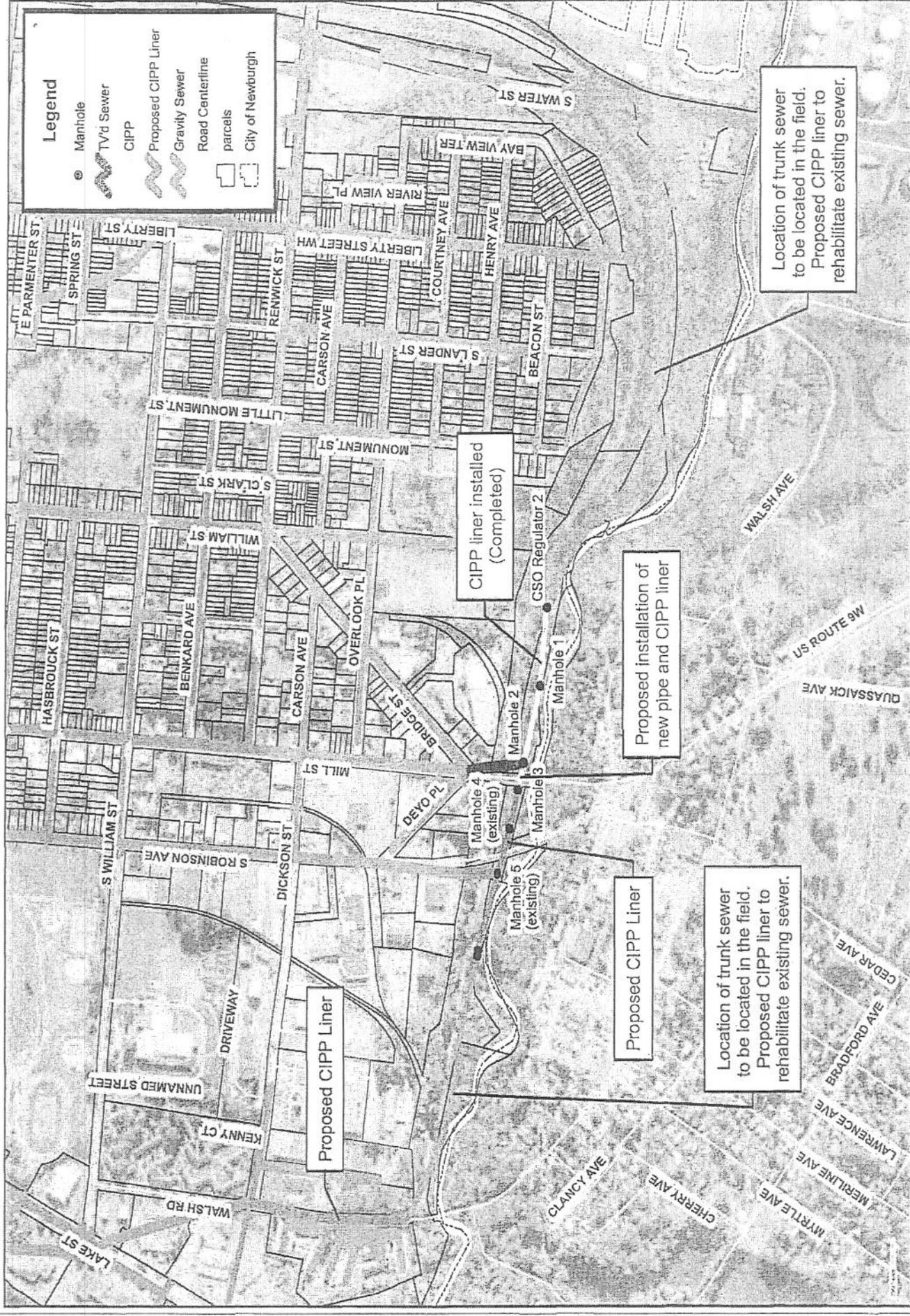
**PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)**

**INSTRUCTIONS:** For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

<p><input type="checkbox"/> Check this box if you have identified one or more potentially large or significant adverse impacts which <b>MAY</b> occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.</p> <p><input type="checkbox"/> Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action <b>WILL NOT</b> result in any significant adverse environmental impacts <b>AND</b> provide, on attachments as necessary, the reasons supporting this determination.</p>	
Name of Lead Agency	Date
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Signature of Responsible Officer in Lead Agency	Signature of Preparer (If different from responsible officer)

**Reset**





1 inch = 600 feet

**RESOLUTION NO.: 194 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE ON BEHALF OF THE CITY OF NEWBURGH  
A LAND DEVELOPMENT AGREEMENT WITH  
MILL STREET PARTNERS, LLC FOR THE REDEVELOPMENT OF CITY  
OWNED PROPERTIES KNOWN AS THE MID-BROADWAY SITE**

**WHEREAS**, the City of Newburgh wishes to develop the City-owned .66 acre Lander Street surface parking lot (between Chambers Street and Lander Street) as well as the 1.8 acre principal site that fronts on Broadway (the "Mid-Broadway Site"); and

**WHEREAS**, the City has issued a Request For Qualifications (RFQ) for the development of the Mid-Broadway Site and received six (6) responses from developers interested in pursuing a development project on the Mid-Broadway site; and

**WHEREAS**, the City Council has reviewed the responses to the RFQ and has determined that Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. is the preferred team to develop the Mid-Broadway site; and

**WHEREAS**, by Resolution No. 78-2012 of May 29, 2012, the City Council authorized to the City Manager to negotiate on behalf of the City of Newburgh a Development and Land Disposition Agreement with Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. for the redevelopment of the Mid-Broadway site; and

**WHEREAS**, the City Council has reviewed the Development and Land Disposition Agreement with Mill Street Partners, LLC, attached hereto and made part hereof, and finds that entering into such agreement is in the best interest 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 Development and Land Disposition Agreement with Mill Street Partners, LLC for the redevelopment of the Mid-Broadway site.

**Mayor Kennedy said that on page eight the last paragraph says, “If the developer has not secured the public funding sufficient to begin construction of the project within twenty-four months of the execution of this agreement, the developer may, at its election, extend the term of this agreement another twelve month period by making a payment of \$50,000.00 to the Council.” She would like to add, “And by approval of a majority vote of the Council.” This way it is a two-way thing which is all she is asking for. She asked Michelle Kelson, Corporation Counsel, to add that language to the contract.**

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

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

**ADOPTED**

**RESOLUTION NO.:195 - 2012**

**OF**

**OCTOBER 22, 2012**

**A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF  
TERESA GARCIA DE FLORES AGAINST THE CITY OF NEWBURGH  
IN THE AMOUNT OF TWENTY THOUSAND DOLLARS**

**WHEREAS**, Teresa Garcia de Flores brought an action against the City of Newburgh; and

**WHEREAS**, the plaintiff and the City of Newburgh have reached an agreement for the payment of the settlement in the amount of Twenty Thousand (\$20,000.00) Dollars in exchange for a release to resolve all claims among them; and

**WHEREAS**, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the plaintiff and the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City's attorneys are hereby authorized to settle the claim of Teresa Garcia de Flores against the City of Newburgh in the total amount of Twenty Thousand (\$20,000.00) Dollars and that City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

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

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

**ADOPTED**

## OLD BUSINESS

Councilman Dillard said that again he feels slighted with this agenda. On the 18<sup>th</sup> we agreed to include the Police Department Consultant RFP.

City Manager, Richard Herbek, responded that it has already gone out. We don't need a resolution for that.

Councilman Dillard said that is for the police review.

City Manager, Richard Herbek, said that we reviewed it and no one had any particular comments so he believes it is out and if it's not it's imminent.

Councilman Dillard said let's get it out if it's not.

City Manager, Richard Herbek, said he believes we are giving two weeks for the responses so we should get them back pretty quickly.

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

## NEW BUSINESS

There was no new business.

## GENERAL COMMENTS FROM THE PUBLIC

Cynthia, 11 Grand Street, said that she is representing Community Voices Heard and she is here to invite the Council members to a meeting that they are having on November 7<sup>th</sup> from 7:30 p.m. to 8:30 p.m. at the Ritz Theater to talk about housing issues in Newburgh. These issues have not gone away no matter how much we try to ignore them.

William Ruud, Humphries Place, commented that certain members have attempted to destroy the name of a good man who has done plenty for this City by putting a bunch of junk in the paper and he thinks it's disgraceful.

Mark Coolidge, City of Newburgh, said that this afternoon, while our City is worried about Mr. Herbek's personal life, he was waived down by Pastor Rosie because there was a man on the corner of Broadway and Chambers Street groping a ten year old girl. They called the Police Department and it took twenty minutes before they were able to get two police cars there. In the meantime, he and Omari Shakur walked around trying to find this guy but they were unable to find him. Why does it take twenty minutes to get a response from the police? He told everyone that we need to watch our children because someone is going around groping little girls. He added that we have a lot of shootings here in the City of Newburgh and some are being reported but some are not. There was a shooting on Lander Street where supposedly three people were hit but there was nothing in the paper or on the news. Taxpayers are not really being told what is going on in our City and we need to know so that we can protect ourselves. In regard to Mr. Herbek he told him that he is in his corner. What he does in his personal life is none of our business as long as when he comes through the front door of this building, he fulfills his job. Unfortunately a lot of people in our City don't like him because of what he is getting paid but he was hired at that salary and until he makes the change to take a lower pay we are going to pay him. When he was pulled over by the City of Newburgh cops they didn't do their job right again. He told the Chief of Police that protocol was not followed with the City Manager. If he had an alleged prostitute in his car then the car should have been stopped and the prostitute should have been taken out of the car and searched. Because the City Manager was behind the wheel they allowed him to drive away and he was not charged with anything so why is this City humiliating this man?

Denise Ribble, City of Newburgh, said that she thinks it's unfortunate that things like this take us away from the business of the City and her recommendation is that there should be an impartial investigation. Not one

conducted by the Chief of Police, the Times Herald Record or public commentary. She thinks that we owe this to the public and to Mr. Herbek.

Barbara Smith, Powell Avenue, said that you may not agree with what she says but everyone has the right to speak what is on their mind and speak from their heart. When she reads words, she is impressed because that is the only thing she can go by. If you tell her that a quality of life in her city is encumbered by prostitution and drugs on her street, then she expects them as people who are in government to honor that and do it the right way. You do not do it in the manner that it was done. If Mr. Herbek has admitted that he has done something that he does not believe was in the best interest of him or his family, she takes those words as gospel. She read a section from the book titled The Samurai called "A Single Word".

Omari Shakur, New Voters Movement, said that as Mark Coolidge noted earlier we have a pedophile here in the City of Newburgh so watch your children. Once again we are here at a time when we have a crisis in our City and you see we have a full house tonight because our Police Department failed to do their job. If anyone read that story, Officer Lehar, the one who shot his son in the back of the head and then was given a medal because he was a highly trained professional, said that he saw a known prostitute get into this man's car coming out from a drug place and he didn't check out the crime. There is no evidence that this man did anything wrong so the Mayor should not have made a statement that he should be in Social Services. He thinks that she should resign and go to Social Services because she is the head of this City and she doesn't know what she is doing. We have a man that was shot fifteen times but did you see her talking about an investigation or that someone should resign then? It's Budget time and because they hired four new police officers they were thinking that he was going to cut their overtime budget so the police look like they targeted this man just like they target our children in our community every day and set them up with stories but there is no evidence. There is no evidence that this man did anything wrong. Personally he told the City Manager that he made the wrong choice being down there at 7:00 at night because we all know what's going on in our community. Once again the police did not do their job and Officer Lehar is the one who should be fired because he saw a crime and he didn't investigate it. How could the Mayor cause all this confusion at a time when we need stability?

Andrew Marino, 105 Maple Street, said that he has heartfelt sympathy for the City Manager. This man is a good man and his heart is in the right place. At times we act on our emotions before we think it through and he believes in his heart that this man at that point in time did exactly what his heart told him to do. He also read an article in the paper regarding not-for-profits and it targeted St. Luke's-Cornwall Hospital, Mt. St. Mary's and

Orange County Community College. They are three of our most important city-wide health care and educational providers. They produce education for our children to move on in life and become successful. If we are going to do a not-for-profit across the board, perhaps the idea of a safe stay, so to speak, where it covers all not-for-profits and that money could go into the General Fund. That way everyone is happy and that line of general funding could go to the Police and Fire Departments.

Usef Belford, City of Newburgh, said that when a person fulfills their job and their duty, when they are on their own time then that is their time. We all have baggage in our backyards. He sang a song to the audience about unity.

A resident of the City of Newburgh said that he has know Mr. Herbek for a number of years now and he has called him a lot of things but the two things he has never called him was stupid or crazy. If he did what he has heard him accused of by people who weren't there he would have had to be stupid, crazy or both. Obviously nothing criminal happened because the officer didn't pursue anything. No one was arrested and he didn't even receive a ticket so no crime happened. Mr. Herbek has worked very hard. He inherited a city that we didn't even know how badly in the hole we were. He has brought some fiscal stability and a little responsibility to the City. He has said, *"We can't do that"* many times which has not made him popular. He brought huge tax increases not because he felt like it but because it had to be done and he did it to keep the City functioning. He has done an admirable job under very adverse conditions. If you dismiss him because of this, you are going to get us involved in a lawsuit that will cost us a lot of money. There is no evidence of any wrongdoing. He said that Mr. Herbek is like him. They are old school and they like to help people. Sometimes the people they help may seem a little unsavory to others but you do it anyway. He has even associated with politicians and bureaucrats because it had to be done. He applauds Mr. Herbek for trying to help another human being.

Janet Gianopoulos, City of Newburgh, said that she sent an article in the newspaper to the Council about a student at Mt. St. Mary's College who is a soccer player studying psychology and she has a national scoring record among all college students in the country. This was a recent article and it is good news in the City of Newburgh. She added that she was once in a car with a prostitute at 11:30 p.m. when she was working with a shelter and she did nothing wrong. She doesn't see where gender should have anything to do with it and she can sympathize with Mr. Herbek because she was in a similar situation although she didn't get stopped. One of the Council members asked how we got here and she looked back over all of the minutes for this year and found no case in which the Council as a whole gave instructions to the City

Manager on its priority goals and we need to use the City Manager's expertise. In regard to the Parking Tribunal, we have an opportunity to gain one to three million dollars and we need that money so what is happening with that. We need development and to look at what we have so that we can issue other RFP's and try to leverage the properties that we have and put them into use to benefit the tax rolls. All of the Boards that give citizens voices in this City need to be operative.

A resident of the City of Newburgh said that she can neither confirm nor deny the City Manager's participation with a prostitute and said that is his business but she agrees with a lot of people about the police officers. How come the police officers didn't do their job because if they felt that something was going on then they should have investigated like they do any other inner city youth that lives here in the City of Newburgh. Is the same courtesy going to be extended to everyone else who gets pulled over? She feels that the police dropped the ball on this like they did with her Nephew and the investigation of the Lembhard situation. The police continually drop the ball so she thinks that the attention should go from the City Manager to the Police Department.

Charles Kimbrough, 41 Dubois Street, said that he watched the last Council meeting on You Tube and he had a conversation with his four year old grandson who asked him if he was sad or if someone had gotten hurt again. He gave his grandson a hug and told him that everything was going to be alright and normally he believes that but for the first time he is not really sure. This whole meeting has not focused on any of our issues and that has been our number one problem. We keep getting sidetracked. For whatever reasons people keep pushing these emotional buttons and we get off track. His concern is the kids that are getting killed. When he gets confused about what direction we are going in, how does he convey that to the people that he is talking to? He deals with life and death and the kids that they deal with they are trying to keep alive and he doesn't see that happening. If he can leave here for almost six months and come back to business as usual, he has a problem with that. He said that we can't seem to pull it together and get a viable relationship between the police and the community. The people are complaining that the police are violent and now we are yelling because they didn't respond to an issue. We don't like them but we need them so that means that we need to figure out a relationship because we are talking about life and death.

Timothy Hayes-el, City of Newburgh, said that he has lived here all his life so we know what goes on in the streets. We have young people dying and these are trying times for us. He sees that some people don't want the City Manager to go but he has to be on the job. He doesn't even know why we are

arguing because everybody knows what it is for real and ultimately it is on the Council. He said that he puts his trust in Councilman Brown.

Edith King, City of Newburgh, asked how far they are with the investigation. Michael has been dead for seven months now and she hasn't heard anything. On a brighter note, when Michael Lembhard died, she, Mark and Omari decided that they wanted to do something for the children in their neighborhood. Last month with the help of Mr. Valentine who paid for the tickets and Pastor Howard who drove they sent ten children to see the Voices of Glory in Poughkeepsie and they loved it. This Saturday again with the help of Mr. Valentine, Pastor Howard and Pastor Burke we sent about thirty people to the farm to pick pumpkins and they had a wonderful time. They have decided that once a month they are going to sponsor something and get as many kids to go as they can. They are thinking about maybe going ice skating next time so if anyone has kids who are interested please get in touch with one of them.

Pauline Dillard, City of Newburgh, thanked the City Council from the bottom of her heart because we have never had a City Council expose the corruption in the City of Newburgh and that is why this City is in this condition. She thanked the members of the City Council that have made the decision to be upright, honest and of high integrity and not letting this incident and behavior get swept under the rug as has been done in Newburgh for many, many years. Newburgh's corruption by the power brokers is systemic leaving this city busted, impoverished, broken and spiritually dead. The young people that witness and hear of such injustice must feel angry, frustrated, defenseless and a sense of hopelessness because they are held to a different set of rules and their lives are being destroyed by the criminal justice system. As the saying goes, the law of the land is only for the poor. She added may the Lord please have mercy on the Children in the City of Newburgh. Their eyes have seen and their ears have heard more wickedness, deception and lies than a young soul can bear. To Mark Coolidge she said that the story about the policemen coming to rescue Pastor Rosie is not true because she works with her and she prides herself that they are there in two minutes. The poor need to stop letting themselves get exploited. We have 1.2 million people in prison. When the cops roll up they get arrested and they go to jail so their lives are ruined. This is totally ridiculous. She is not saying that Mr. Herbek is guilty but it is not proper for a City Manager to be out in those neighborhoods picking up someone. If he has these people down in the hood that want to defend him, she just doesn't get it.

Jessie Howard, Town of Newburgh, said that he does a lot of community work here in the City of Newburgh and the Lembhard and Coolidge families went through a traumatic experience so they are in crisis

right now and they need support from their community, friends and family. What they are trying to do with the help of former Mayor Nicholas Valentine and others is take them to different sites. They went to see the Voices of Glory and to a farm to pick pumpkins this past Saturday. Something to get the kids out of this environment so they can cope with something that they are not used to in their lives. With everyone's support he thinks that they can work their way through this. He thanked Pastor Burke for providing transportation and Nicholas Valentine for providing the finances. They need a whole community behind them to help them get over this. He said that they also connected with the Criminal Justice Department and Social Services Mental Health to help them also get counseling.

Kippy Boyle, City of Newburgh, thanked the Districting Committee for a clear and concise report. It was well done and she understood it. It is such an important thing that will be happening for all of us and it is too bad that something that really affects the future of our political system here didn't receive one comment from anyone. She thanked them for their hard work and she is looking forward to the public hearing. She added that there were twenty-two resolutions on this agenda tonight and the Council commented on two. The one that was about a nine million dollar bond she thanked Councilman Brown for saying something because if he had not asked about it and asked for it to be tabled they would have just simply voted on it. When he asked for it to be tabled they all suddenly needed it to be explained which means that they didn't understand it but they were going to vote on it. On January 23, 2012, resolution #12-2012 was voted on appointing Richard Herbek as City Manager for the City of Newburgh for a one year term. Her concern is that January 23, 2013 is coming very soon and they have an obligation to the public to start their search and to sit down and see what qualifications are meaningful to them. She doesn't think that exercising poor judgment should be at the top of the list. She added that Tyrone Crabb Park is one of the things that she wishes they would pay attention to. In 2007, \$469,000.00 was used in connection with the development of Tyrone Crabb Park. November 2009, we bonded \$510,000.00 towards improvements of Tyrone Crabb Park. December 2011, \$26,500.00 was paid to Eberlin & Eberlin for additional services. It is now almost November, 2012 and she would like to know where all of that money has gone.

Margaret, City of Newburgh, said that she was at a local Church recently and in defense to the youth in this community she saw that a lot of them were afraid. They were in foster care and came from foster homes so a lot of these individuals need help. The Police Department is not the only issue in Newburgh. It is also CPS, NHRC and some of these other agencies that are unjustly ripping children from their good mothers and fathers regardless of

whether they come from a one or two parent household. It is critical to get to understand them and to reach out to them.

Nicholas Valentine, 350 Water Street, said that he was planning to come in two weeks for the public hearing on the Budget because he believes that a few things that the Council has to vote on are crucial to the City of Newburgh but when this news hit last week he saw the dividing lines of our Council. Someone mentioned earlier about the Charter change and the recommendations and if it wasn't for the citizens of the City of Newburgh passing that Charter resolution we wouldn't even be talking tonight because it would have only taken three votes to change a City Manager. It has now been changed to a super majority which he thinks is probably one of the best decisions the City of Newburgh residents and voters could have made. It should be a monumental decision and a super majority. We approve money, house and properties as well as the Budget with a three to two vote. In regard to the Budget, he knows that it is difficult right now and there is a lot of division. He told the Council that it is important to stay focused on this Budget because Albany is watching us and they always look to see where we are going to screw up next. They can decide on the City Manager later on but he doesn't think that they should make an incident like this the thing that tips over the edge and then puts us in a situation where we are either paying former City Managers like we did just recently with \$350,000.00 plus legal fees. It is not necessary and it is not responsible. He told the Council to get through the Budget as you can see from the people here tonight. He said that he will be back in two weeks because he really believes that those Bonds and BAN's have to be passed for the fiscal stability of this City of which this City Manager worked so hard to achieve.

Jose Servellon, City of Newburgh, said that he and his family are begging the City Council, City Manager, City Attorney and Police Department to consider his Nephew. He is still in Honduras with no family and he needs to come back home. His case is still open so they can still sign the form.

Stephen Ruelke, City of Newburgh, said that he used to work for the City of Newburgh and sued the City for violation of an Open Meetings Law and haggled a lot or disagreed with Richard Herbek. The disagreements they had were straight forward and honest and they didn't get in the way of them doing their jobs. He said that he has a great deal of respect for him because of that. He added that he as made some stupid moves in life as he is sure others have too even on good intentions. He is going to assume that since Richard Herbek has always been honest with him that he is being honest now although he feels that what he did was really boneheaded. The City Manager said that he was trying to fix something but we can't fix anybody. All we can do is open doors of opportunity for people to walk through them and to

become the human beings that God intended for them to become. The other thing he said was that he was trying to stop someone from dying on the streets and God love him for that because too many of our sisters and brothers, children and parents are dying on the streets. He told the Mayor that we have to do something about the disease that is killing us which is poverty. We are treating the symptoms and doing a lousy job. It is time to get it together and say that we don't want this to go on. Not only do we not want the City Council to be broken and treating one another like trash we don't want that to trickle down to the streets so we are going to do something about it and not just talk about it. He wants the Mayor to put together a group of people who are going to take this on and diagnose and understand that disease beyond comprehension. Cities all over the Country are doing this. At the same time he wants the Mayor to treat the symptoms because we can't continue like this.

Debra, City of Newburgh, said that she is an advocate for people with HIV and AIDS and one thing that the City Manager did back in June for Councilwoman Lee and herself was allow them to use this room when no one else would come forward. If anyone here should be resigning she thinks it should be our Mayor.

A City of Newburgh resident said that it is up to us to look out for us. It is not up the City Council. It is about self sufficiency and communities looking out for communities. It is about us standing up for each other because we know what is going on in the City of Newburgh. Now that we know the problem let's get the solution because our kids are dying and our mother's are crying. What they do has no relevance to what we do. Tomorrow night at 7:00 p.m. there will be a community meeting at the NCAC building in the upstairs ballroom. It will be about solution and action. It is up to us to take care of us. Stop running to these City Council meetings because they are not giving us anything. We could discuss the problems forever but we have to start standing up for ourselves. We have to take back our City because it belongs to us not the City Council. If you want to be part of the solution, they are meeting at 7:00 p.m. at the Masonic Temple at 48 Grand Street.

Lilliam Harris, City of Newburgh, thanked the Council for being together tonight because she didn't want to hear any bickering between them. She told the City Manager that he had a right to be wherever he was it just seems like we are always judging. He was not charged with anything and he did not get a ticket so she would like to know how the newspaper got a hold of it. She said that she has been out on the streets where the prostitutes are begging for money so just because you stopped to talk to one doesn't mean that anything is going on and we are not the Judge.

Pebbles, 55 Varick Homes, said that Rick Herbek is a City Manager who chose not only to work for the City but to help the residents in the City which is what a genuine City Manager does. It is disappointing when the good of others is turned around and spoken evil of. Mr. Herbek's actions are proof that he should be here managing the City and not pressured into resigning from the City. Two Council meetings ago she recalls hearing that some residents went to some city officials for help but they had not helped them at all. Mr. Herbek helped and look what happened to him? We don't get to chose who we want to help because when a person reaches out for help or seems to need help it is our duty to just help; nothing more and nothing less. The police monitored, followed and then stopped Mr. Herbek and then they left which would have never happened with someone else. She told the Mayor that her comment in the paper was that she had concerns because regardless of what the story is the credibility is very thin but for three to four weeks when she had illegal tenants in her building she wasn't worried about her credibility then.

Dr. Benilda Armstead-Jones, City of Newburgh, read a religious scripture and said that she was calling on Jesus tonight. She said that Mr. Herbek has been a good City Manager and she said thank you to him and to continue doing his work. We need to stop disrespecting ourselves and our children in the manner in which we conduct ourselves sitting before them.

Brenda McPhail, City of Newburgh, came tonight to tell Mr. Herbek that she is proud of him and to keep doing the work that he is doing. Everyone has baggage and something that you don't want anyone else to know about. Mr. Herbek has done his job and he is doing it very well because he has helped her. She told him to not worry about what people say about him because people will talk about you until the day you die. She added that what goes around comes around. We need Peace so people need to start praying because that is what is going to change Newburgh. We have to stop killing and hating one another.

Sheila Monk, City of Newburgh, said that she supports Mr. Herbek and the excellent job he has done. She said that she called the Mayor and told her to step back and let him do his job. If he is going to be persecuted for helping someone, that is wrong. She has more of a problem with a City Manager that doesn't help. The Mayor said that we have an image to keep but the Council has not been keeping their image. Ever time we come here the Council acts like children and every one of them has been talked about. She said that they have heard lies about all of the Council members yet they put the City Manager in the newspaper.

Mayor Kennedy told Ms. Monk to make sure of her facts because she is walking on thin ground.

Ms. Monk said that the Council didn't make sure of their facts before they put the City Manager in the paper.

Pastor Rosie Andrews, 104 Broadway, Kids Initiative, said that she loves everyone here but to those who want to attack the not-for-profits she noted that she took home about \$1200.00 last year for herself. She said that she really loves the kids in this City. She eats the food that comes in as donation and she dresses with clothes that are donated or bought for her. Not all of us are trying to exploit the City's money because we are giving back. She prayed for everyone here and noted that on October 30<sup>th</sup>, the Ministers are going to have a City wide prayer meeting for all of our problems and to ask God to help us at the House of Refuge at 6:00 p.m.

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

## COMMENTS FROM THE COUNCIL

Councilwoman Angelo thanked everyone for the moral support of the City Manager because he works very hard. She said that she had a very bad weekend praying for him. She pointed out that the City Council has to work together but one of our Councilmen continually harasses Mr. Herbek by saying, *"Listen to me buddy, you are not going to be here after January 1<sup>st</sup>"* and that goes on at every meeting. She feels that as of this day that should stop and we should start pulling our ranks together and rally behind this man because we have a Budget to work on. She again thanked everyone for coming tonight.

Councilman Brown said that no one at this table created this. Rick Herbek created this situation. He told him in Executive Session that he doesn't care what he does with his personal life and that he is a really nice guy with a good heart. The problem is when his personal life affects the image of this City. The residents know some of what happened but he has the police report that tells him what really happened. Rick says that he was trying to help this young lady and he believes that he was but if he was trying to help her then he would have been parked in front of a methadone clinic trying to convince her to go in but he was parked in front of a known drug spot instead. The young lady was outside of the car speaking to an African-American male. She then gets back into the car and the car pulls away from the curb with the lights out. The police set up to make the stop because they believed that drugs were in the car. They make the stop but they don't continue all the way which is the end of the story. If Rick Herbek was trying to help someone's daughter would you want him parked on the corner of Lander near a known drug spot speaking to someone who may or may not be a drug dealer? He said that this City has enough image problems and we don't need any more. The City Manager created this image problem. No one at the table asked him to do that so when he sees that he says, *"Yes, I want you to resign"*. Apparently the City Manager felt like what he said was true because he contemplated it over the weekend and then called the Mayor saying that he thought he should resign. You don't resign if you don't feel like you did something wrong. Maybe he did or maybe he didn't but at the end of the day he wants a City Manager that does not promote the demise of this City because this City is on track to move forward. He said that he wanted the City Manager's resignation prior to his action because of other reasons. We are facing a new Budget and we are trying to manage within a 2% tax cap so we don't raise the taxes. It takes a special person to understand the financing of managing a 2% tax cap and in his opinion Rick Herbek does not have those management skills. That is why he is not on board to keep him another year. He believes that we can go forward faster if we had another City Manager focused on the 2% tax cap creating jobs.

All he hears from this audience is about creating jobs. If Rick Herbek could tell him right now how many jobs he has created for the people of the City of Newburgh, then he will stop talking and let him speak but he cannot. The only jobs created were when we had some construction it created one job and about \$75,000.00 left this City. We are now set to demolish three buildings for about \$300,000.00 and he is interested to know how many jobs will be created when we do those buildings. The problem with creating a job is that if you have a job and it only lasts ten days that means you only get ten days pay but if you have a job that lasts a year, you get an annual salary. Himself, Councilman Dillard and the Mayor have an idea to put real people in this City to work year round tearing down our own houses and doing our own construction. Putting real people to work and transforming a department that drains the City Budget into a department that makes money for this City. He said that he is not the City Manager but if he had the ideas or was willing to listen to the ideas that this Council had then maybe they would be willing to work with him but he chooses instead to listen to two Council members. The City is not run by two Council members and the majority vote is three; in certain cases it's four. If we can't come together to run this City then this City is already under water. Now you have a City and a Council that is divided because of the City Manager. If Rick Herbek can prove to him that he knows how to manage in a 2% tax cap, then he can stay. He has seen the Budget and he knows it because the Budget for 2013 is a reflection of the Budget for 2012. It is a garbage Budget and the Comptroller will prove that in the next few days. Rick Herbek is not the City Manager moving forward in his opinion which he is entitled to.

Councilman Dillard said that his concern is the stories that have been told. According to Rick he met this young lady six to eight weeks ago by the Post Office and she was crying but on the night that the incident happened he told the Council that this young lady called him. His thought pattern is why did she call him and why did he go there? That is confusing to him. He added that the Police Department did not do their job. On this report it states that they arrived at 19:06 and completed their task at 19:07 so they were there for only one minute and this coincides with what the newspaper reported. The Officers walked to the car, saw who it was and then walked away. The key is that there should be no preferential treatment for anybody in this City. If he went out and acted like a fool he should expect consequences based on his actions. He likes Rick and he has worked with him for three to four years now but he cannot accept the explanation nor Rick being the City Manager another day. It may happen and we will probably have compromise but he suggested that the Council begin to look for a City Manager tomorrow. He also suggested that the Council submit to Rick the ninety day letter in reference to his services being terminated.

Councilwoman Lee said that in December, 2011, members of the predominately black community told her that they had received calls saying that she sold out the black community by working to keep Mr. Herbek. Those calls came from Mayor Kennedy and have gone on throughout her career as a City Council representative. What she says now and what she said then is that this City needs to be stable which it has never been. She doesn't know what image people are talking about other than the despicable image that gets played throughout the Media. We haven't created an image. We have done nothing to bring funds into this City nor have we tried to pave a way to make the City operate in a smooth way. She said that she introduced "Training Without Walls" which was an agreement with Taylor Recyclables to provide training to the people who were trained by Local 17. She honestly thought that would be a good project but it was shot down and never went anywhere. She is still hopeful that we can bring some paid training into the City because she knows that people who live here need jobs. She would like to stay focused on the needs of the City rather than speculation about Mr. Herbek. She feels that profiling people is really a problem in this City and using your gut reaction to form an opinion she thinks is wrong. She suggested that if anyone wants to know about their Council members all they have to do is FOIL a criminal record. If you want to see about throwing stones and end this right now, then just FOIL a criminal history. What is happening here is not about Mr. Herbek it's about the venom that gets spewed throughout the City anytime a person wants to target you. He is the target today and to that she says, "Thank God" because when she was the target her son asked her why people were saying that she smelled like refer and what do you say to that? Since he asked a ridiculous question she gave him a ridiculous answer, "It's legal in New Jersey so I go across the New Jersey Line". What should she say to him? If Mr. Herbek doesn't go to Chamber Street, then he needs to be fired because there shouldn't be a street in this City that he doesn't walk down or a person in this City that he doesn't talk to. She could sit back and judge him and make the same kind of comments but don't think for one minute that your ideas outside of what gets presented right here in front of you get pushed behind closed doors because the only thing that has been pushed over the past ten months is, "Mr. Herbek you need to go". She said in the last Council meeting that he needs an Attorney and she hopes to God that his Attorney reviews the audio because if it were her they wouldn't last two seconds. Six months ago her Attorney would have come out of the gate swinging because she doesn't play that kind of nonsense. You are not going to malign her name and ruin her reputation. Everybody on this Council gets talked about and there is no exception. She doesn't have a problem with what people say but she has a problem when we start carrying back the information no matter how wrong it is or calling the Media and notifying everyone that Mr. Herbek has resigned without notifying the Council. She has a problem with getting calls and finding out what is going on in the City through the Media. These are

problems that we have to look at. If Mr. Herbek does not help the people in this City, then he needs to go. It's as simple as that. There are people here who know that they have been stopped by the Police and were treated and talked to unfairly so why is Mr. Herbek any different? In terms of the Budget, Councilman Brown is the last person she would follow since he is also the person who screwed up the Budget with the Housing Authority when HUD had to come in and take over. It is Mr. Herbek's job to carry this Budget and it is the Comptroller's job so they need to let them do their jobs. Councilman Dillard was the Chairman of the Board when the Executive Director was fired and he ultimately became the Executive Director and HUD came in and threatened to take over the Housing Authority. She said that the articles are there and they need to stop throwing stones. What is even more telling is that those articles have resurfaced and people are talking about them because there is an election and Councilman Dillard is running. She said that we can't afford to throw stones at nobody. Mr. Herbek wasn't stopped or arrested so end of story. She wants to know from the Police how this got to the Media and she wants to know from the Mayor who appointed her, Councilman Dillard and Councilman Brown as the voice of integrity for this City because none of them can talk. They should be ashamed of themselves. This is a married man and they have insulted him and his wife and she has done nothing to deserve this. This should have never gone to the newspaper. As for creating an image, we don't have one. Your image is murdering kids, drugs and corruption and changing your image is what is needed. Mr. Herbek alone has changed that image with CDBG by straightening out years of fund misappropriation and other areas where we lost money. If this Council wants to talk about what they did and what he did, they can't hold a candle to him. He put this City on track. She told the Mayor that she has done nothing but spread rumors, accusations and innuendos and stayed in the Media. She ended by saying good night to everyone.

Mayor Kennedy said that she just had a whole level of accusations and anyone can say anything that they choose to. There is an accusation that somehow they set up the City Manager but the City Manager did what he did all by himself. Not one of the three of them knew about any woman or prostitute. They didn't know anything about any of it. She was met on the street on Thursday morning and it was already all over the City. The process is that when someone is stopped it goes to the Police and the Police recorded it as they do for all stops. It goes into to the police blotter and the news media checks the police blotter on a regular basis. That is where the information came from. None of the Council members called or talked to the Media. The Media called them which is how she heard about it. She heard it on the street and then Mr. Herbek went to her at 4:00 p.m. on Thursday and told her what his story was. What she told him then and what she is telling everyone else now is that this is problematic to this City. A lot of people came here tonight

but there are twenty nine thousand people in this City; not just the people that are here tonight. If we are talking about image, this was a really dumb stupid thing for our City Manager to do. She said that she is not making any accusations she is just saying that this is a big image problem. We have an entire city calling, writing and e-mailing. Her phone hasn't stopped ringing for two days. Everyone has their opinion and they are all entitled to it. From the talk that is going on here tonight you would think that this man walks on water and that everything that happens in this City has happened by him alone which is simply not true. We have hired consultants and specialists and we have had help from the State Newburgh Fiscal Recovery Act and the State Comptroller is on top us every quarter. We have received all kinds of help from all kinds of places to turn this City right side up. It is not the job of one person by any stretch of imagination and we have some fine people sitting in our departments that are trying to get things done. There has been some progress but we have to move forward and she agrees with former Mayor Valentine that we need to get through the Budget process. She stated that nobody was saying anything about firing the City Manager or breaking a contract. We are not talking about breaking a contract and we never were, however, there are some things that need to move forward and as Councilman Brown has said we need jobs not more training. We need jobs and they have had a plan to get a team together that can be managed internally to give people ongoing jobs taking both houses down and building things to get some work done in this City but it has taken forever to get this off the ground. We have gone through a whole summer and none of that work got done and they are frustrated with it. We had a demonstration here last February about a website that was going to move this City forward and allow us to do online problems and requests as well as track what we are doing and move us into the twenty-first century. We ordered a website and now she finds out that what we asked for at that meeting is not what is being delivered. What is being delivered is just changing the look and feel of what we had already so we are going to have to do further negotiations just to get what we really asked for and put more money on the table. We did put goals on when we started out and when they asked the City Manager for the progress of that they were told it would be reported on at the end of the year but it should be reported on a quarterly basis and corrected as you go along. Everyone standing here tonight making statements about what is happening and what is not happening don't know all of the facts. She congratulated the Districting Committee for a good job. She said that she appreciated their presentation and the great work that they have done. She also thanked former Mayor Valentine and everyone else who is helping with the children. She thanked Mark Coolidge for the clean up and for what he is doing. One thing we need to move on quickly is getting the Board of Ethics set up because this is exactly the kind of problem that would go to a Board of Ethics. As one of our constituents said tonight, in order to get things cleared up here we do need to do some kind of an investigation and get

to the bottom of what happened. In regard to Tyrone Crabb Park, we have been trying to move forward on that and she believes they have received a report telling them that we have to do something like \$400,000.00 worth of environmental studies or something like that.

City Manager, Richard Herbek said that they have been working on Tryone Crabb Park and will be giving the Council an update very shortly. They were held up because of the archeological concerns that NYSHIP had. It was a requirement because of where that was that we undertake an archeological study. The archeological study determined that some of the work that had been planned could not be accomplished in the way that it was designed. He noted that all of that preceded him. We are at the point where it has been redesigned and he believes that there is a meeting coming up very shortly.

Mayor Kennedy encouraged people to get the facts and to work on this together. Many people have mentioned that and she has been more than willing to work on things together and get things on track. She is not the one standing here creating conflict on a regular basis. Someone made an allegation about illegal tenants in her house and she never had illegal tenants. There was an inspection on her house at the beginning of the year and her house was cleared. There is no such thing going on in her home. People can say whatever they want and you can do any kind of research you want on her record because you won't find a thing there. In terms of smearing someone, she asked Mr. Herbek if she tried to smear him.

City Manager, Richard Herbek said that she has his statement and he is not going to comment any further.

Mayor Kennedy said that she told him that she cared about what was happening and his wife. She did not make the decisions and she did not put herself in that place on Thursday night so it is not on her at all. The thing we can do to move forward is to get an impartial investigation that clears up whatever is going on here and we need to get through this Budget season.

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

Mayor Kennedy noted that at the end of this meeting the Council will enter Executive Session concerning the medical, financial, credit or employment history of a particular person or corporation or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.

Councilman Dillard stated that Councilwoman Angelo is coming down with something so she can not attend the Executive Session but he does not know what Councilwoman Lee is coming down with or whatever but he wanted that on the record.

Councilwoman Lee said that she is recovering from surgery.

Councilman Dillard said that he was sorry and he did not know about that.

Mayor Kennedy said that she believes that was about a week ago and she hopes she is well.

Councilwoman Lee told Mayor Kennedy that she is part of the legislative body for the City and not for the health profession but yes she did have surgery so she will be leaving here tonight but we can go ahead and vote because they are used to having three people in Executive Session.

Councilman Brown moved and Councilman Dillard seconded that the Council enter Executive Session.

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

Nays - Councilwoman Angelo, Councilwoman Lee - 2

CARRIED

Councilwoman Lee told Mr. Herbek to only go in to Executive Session with his Attorney.

Councilman Brown said that is not in the Charter.

Mayor Kennedy said that we can't vote or anything in Executive Session.

There being no further business to come before the Council the meeting adjourned at 9:30 P.M.

LORENE VITEK  
CITY CLERK



