



CITY OF NEWBURGH
COUNCIL MEETING AGENDA
SESION GENERAL DEL CONSEJAL

March 27, 2017

7:00 PM

Mayor/Alcaldesa

1. Prayer/Rezo
2. Pledge of Allegiance/Juramento a la Alianza

City Clerk:/Secretaria de la Ciudad

3. Roll Call / Lista de Asistencia

Communications/Comunicaciones

4. Approval of the minutes of the meeting of March 13, 2017
5. City Manager Update / Gerente de la Ciudad pone al día a la audiencia de los planes de cada departamento
6. Comptroller's Monthly Report
(Katie Mack)

Reporte mensual del Contralor. (Katie Mack)

Presentations/Presentaciones

7. A Certificate of Recognition & Appreciation will be given to Chief Dan Cameron for his exceptional service to the City of Newburgh
(Mayor Kennedy and Members of Council)

Un certificado de Reconocimiento y Apreciación será otorgado al Jefe Dan Cameron por su servicio excepcional a la Ciudad de Newburgh. (Alcaldesa Kennedy y Miembros del Consejo)

8. A Presentation will be given by Ramona Monteverde from Safe Harbors regarding the 2017 Annual Community Clean Up
(Ramona Monteverde, Safe Harbors)

Ramona Monteverde de Safe Harbors dará una presentación sobre la campaña de limpieza comunitaria del 2017. (Ramona Monteverde, Safe Harbors)

Comments from the public regarding the agenda/Comentarios del público con respecto a la agenda

Comments from the Council regarding the agenda/Comentarios del Consejo con respecto a la agenda

City Manager's Report/ Informe del Gerente de la Ciudad

9. Resolution No. 75 -2017 -Accepting Donations for Annual City Events in 2017

Resolution authorizing the City Manager to accept donations in support of the City of Newburgh's annual Memorial Day and Fourth of July observances, National Night Out, The Annual International Festival and the Halloween event for 2017. (Katie Mack & Michelle Kelson)

Una resolución autorizando al Gerente de la Ciudad a aceptar donaciones en apoyo de las observaciones anuales por el Día de Conmemoración, el Cuatro de Julio, Noche Nacional Afuera, El Festival Internacional Anual y el evento de Halloween para el 2017. (Katie Mack y Michelle Kelson)

10. Resolution No. 76 -2017 Authorizing Contracts for Performing Artists and related services for City's 2017 annual events

Resolution authorizing the City Manager to enter into agreements with various parties to provide performing arts and related services in connection with the City of Newburgh's annual Memorial Day and Fourth of July observances, National Night Out, the Annual International Festival and the Halloween event for 2017. (Katie Mack & Michelle Kelson)

Una resolución autorizando al Gerente de la Ciudad a entrar en acuerdos con varias partes para proporcionar servicios de artes escénicas y otras similares en conexión con el Día Anual de Conmemoración de la Ciudad de Newburgh, las observancias del Cuatro de Julio, la Noche Nacional Afuera, el Festival Internacional Anual y el evento de Halloween del 2017. (Katie Mack y Michelle Kelson)

11. Resolution No. 77 - 2017 Fire Department Surplus Items

Resolution declaring a John Deere 35kW generator model 4219DF01 designated serial #96227T, a 1989 Dodge Ram Charger designated VIN No. 3B4HM17YOKM941373 and a 2004 Jeep Cherokee designated VIN No. 1J4GW48S74C429368 to be surplus equipment. (Katie Mack)

Una resolución declarando un generador modelo 4219DF01 John Deere 35kW con número de serie designado 96227T, un Dodge Ram Charger de

1989 designado con Numero de VIN 3B4HM17YOKM941373 y un Jeep Cherokee del 2004 designado con Numero de VIN 1J4GW48S74C429368 como equipo de sobra. (Katie Mack)

12. Resolution No. 78 - 2017 Amend 2017 Personnel Book to Restore Mechanic's Helper

Resolution amending the 2017 Personnel Analysis Book to restore one full-time Mechanic's Helper position in the Department of Public Works (Katie Mack)

Una resolución enmendando el Libro de Análisis de Personal del 2017 para restaurar un puesto de Ayudante de Mecánico a tiempo Completo en el Departamento de Obras Públicas. (Katie Mack)

13. Resolution No. 79 -2017 - Amend 2017 Personnel Book to add a temporary Lieutenant in Police Department

Resolution amending the 2017 Personnel Analysis Book to add one (1) Lieutenant position on a temporary basis in the City of Newburgh Police Department (Katie Mack)

Una resolución enmendando el libro de Análisis de Personal del 2017 para agregar un (1) puesto de Teniente sobre una base temporal en el Departamento de Policía de la Ciudad de Newburgh. (Katie Mack)

14. Resolution No. 80 - 2017 266 Carpenter Avenue -- Extension of time to close title

Resolution authorizing the extension of time to close title on the property located at 266 Carpenter Avenue (Section 7, Block 7, Lot 42) sold at private sale to Suzanne Timmer. (Michelle Kelson)

Una resolución autorizando la extensión de tiempo para cerrar en el título de propiedad ubicado en la 266 de la Avenida Carpenter (Sección 7, Bloque 7, Lote 42) vendido en una venta privada a Suzanne Timmer. (Michelle Kelson)

15. Resolution No. 81 - 2017 - Purchase of 35 Concord Street

Resolution to authorize the conveyance of real property known as 35 Concord Street (Section 29, Block 1, Lot 16) at private sale to Lawrence D. Smith for the amount of \$6,200.00. (Deirdre Glenn)

Una resolución para autorizar el traspaso de bienes raíces conocidas como la 35 de la Calle Concord (Sección 29, Bloque 1, Lote 16) en una venta

privada a Lawrence D. Smith por la cantidad de \$6,200.00. (Deirdre Glenn)

16. Resolution No. 82 - 2017 2017 Stop DWI Program

Resolution authorizing the City Manager or the Police Chief as Manager's designee to execute an inter-municipal agreement with the County of Orange confirming City of Newburgh participation in the Stop-DWI Program for the enforcement period of March 14, 2017 to January 1, 2018 and to accept an award not to exceed \$3,083.60 covering 60 person-hours for the first enforcement period of 2017 (March 14, 2017 – May 30, 2017). (Lt. Rich Carrion & Katie Mack)

Una resolución autorizando al Gerente de la Ciudad o Jefe de Policía como designado del Gerente para ejecutar un acuerdo inter-municipal con el Condado de Orange confirmando la participación de la Ciudad de Newburgh en el Programa STOP-DWI durante la puesta en vigor del 14 de marzo de 2017 al 1 de enero de 2018 y aceptar una asignación que no exceda \$3,083.60 cubriendo 60 horas de persona durante la puesta en vigor del periodo del 2017 (14 de marzo de 2017 – 30 de mayo de 2017) (Teniente Rich Carrion y Katie Mack)

17. Resolution No. 83 - 2017 Office Lease Agreement with United Way

Resolution authorizing the City Manager to enter into an office lease agreement with the United Way Orange Dutchess Region for a portion of the second floor of 123 Grand Street for a term of one year. (Michelle Kelson)

Una resolución autorizando al Gerente de la Ciudad para entrar en un acuerdo para alquiler de oficina con el United Way de la Region de Dutchess para una porción del segundo piso de la 123 de la Calle Grand por el término de un año. (Michelle Kelson)

18. Resolution No. 84 - 2017 - NYS DCJS Byrne JAG Grant Award \$10,000 - IT and Community Policing Supplies

Resolution authorizing the City Manager to accept a New York State Division of Criminal Justice Services Edward Byrne Memorial Justice Grant in the amount of \$10,000.00 for body worn camera transfer stations and community policing supplies. (Lt. Rich Carrion & Katie Mack)

Una resolución autorizando al Gerente de la Ciudad a aceptar una subvención de la División del Estado de Nueva York de los Servicios de Justicia Criminal Conmemorativo de Edward Byrne por el monto de \$10,000.00 para estaciones de transferencia de cámaras corporales y provisiones para vigilancia policial. (Teniente Rich Carrion y Katie Mack)

19. Resolution No. 85 - 2017 Arbor Day Resolution and Proclamation
Resolution declaring April 28, 2017 as Arbor Day in the City of Newburgh

Una resolución declarando el 28 de abril de 2017 como el Día del Árbol en la Ciudad de Newburgh.

20. Resolution No. 86 - Rescheduling Council Meetings

A resolution of the City Council of the City of Newburgh rescheduling the April 6, 2017 Work Session and April 10, 2017 regular meeting. (City Council)

21. Resolution No. 87 - 2017 - Assessment Review Appointment

A Resolution appointment Daniel Gilbert to the Board of Assessment Review. (City Council)

22. Resolution 88 - 2017 -

A resolution authorizing the settlement of litigation regarding the in rem tax foreclosure of liens for the year 2014 relative to 66 Lander Street (section 23, block 7, lot 9). (Michelle Kelson)

23. Ordinance No. 7 - 2017 Chapter 240 Rental Properties - Article II Tenant Responsibilities

Ordinance amending Chapter 240, entitled "Rental Properties" of the Code of Ordinances of the City of Newburgh to enact Article II entitled "Tenant Responsibilities". (Michelle Kelson)

Una ordenanza enmendando el Capítulo 240, titulado "Propiedades de alquiler" del código de ordenanzas de la Ciudad de Newburgh para poner en práctica el Artículo II titulado "Responsabilidades del Inquilino". (Michelle Kelson)

Old Business: / Asuntos Pendientes

24. Resolution 44 - 2017 - Authorizing Amendment#1 with ARCADIS for the South Water Street Sewer Separation Project

Resolution authorizing the City Manager to enter into Amendment No. 1 to the agreement for professional engineering services with Arcadis of New York, Inc. in connection with the South Water Street Sewer Separation Project in an amount not to exceed \$144,500.00. (Jason Morris)

Una resolución autorizando al Gerente de la Ciudad a integrar a la Enmienda No. 1 el acuerdo para servicios de Ingeniería Profesional con Arcadis de Nueva York, Inc. En conexión con el Proyecto de separación de Alcantarillas por un monto que no exceda \$144,500.00. (Jason Morris)

25. Resolution No. 45 - 2017 Amendment#1 with ARCADIS for Regulator#2 Improvements

Resolution authorizing the City Manager to enter into Amendment No. 1 to the agreement for professional engineering services with Arcadis of New York Inc. for the Regulator No. 2 Improvements Project as part of the Combined Sewer Overflow Long Term Control Plan in an amount not to exceed \$157,500.00. (Jason Morris)

Una resolución autorizando al Gerente de la Ciudad a integrar a la Enmienda No. 1 el acuerdo para servicios de Ingeniería Profesional con Arcadis de Nueva York, Inc. Para el Proyecto de Mejoras para el Regulador No. 2 como parte del Plan de Control a Largo Plazo del Desbordamiento del Alcantarillado Combinado por un monto que no exceda \$157, 500.00. (Jason Morris)

New Business: / Nuevos Negocios

Public Comments Regarding General Matters of City Business

Final Comments from the City Council/ Comentarios Finales del Ayuntamiento:

Adjournment/ Aplazamiento:

VOLUNTEERS NEEDED!

Saturday
April
22

8 a.m.
Registration

9 a.m.
Cleanup

12 p.m.
Post-Cleanup
Barbecue

Rain
OR
shine

SAFE HARBORS
OF THE HUDSON



gallery • residence • theater



Newburgh Community Cleanup

Be a part of what's **GREAT** in the City of Newburgh!

The community cleanup will kick off a city-wide effort
to keep Newburgh clean and green all year!

Start/Finish at Safe Harbors of the Hudson • 111 Broadway, Newburgh

This is NOT a bulk pickup day!

For more information,
contact June Henley at 845.784.1110
or email jhenley@safe-harbors.org

Please print and complete the waiver form
available on our website, www.safe-harbors.org



SPONSORS



Transforming Lives and Building Community through Housing and the Arts

¡Te necesitamos!

El Sábado

22

DE ABRIL

8 a.m.
Registración

9 a.m.
limpieza
comunitaria

12 p.m.
una parrillada

**Rain
OR
shine**

**SAFE HARBORS
OF THE HUDSON**



gallery • residence • theater



Limpieza comunitaria de Newburgh

Se parte de lo que es **GENIAL** en Newburgh

Comienzo/Acabado at Safe Harbors of the Hudson
111 Broadway, Newburgh

Este no es un día del recolector a granel!

Ramona Monteverde, 845.784.1104
rmonteverde@safe-harbors.org

Por favor imprima y complete
el formulario de renuncia disponible
en nuestro sitio web, www.safe-harbors.org



SPONSORS



Transforming Lives and Building Community through Housing and the Arts

RESOLUTION NO.: 75-2017

OF

MARCH 27, 2017

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT DONATIONS IN SUPPORT OF THE CITY OF NEWBURGH'S
ANNUAL MEMORIAL DAY AND FOURTH OF JULY OBSERVANCES,
NATIONAL NIGHT OUT, THE ANNUAL INTERNATIONAL FESTIVAL
AND THE HALLOWEEN EVENT FOR 2017**

WHEREAS, the City of Newburgh annually holds Memorial Day and Fourth of July Observances, National Night Out, the Annual International Festival over the Labor Day holiday and the Halloween Event; and

WHEREAS, various businesses, firms and individuals have made and are willing to make contributions of money and in-kind assistance to support these 2017 events; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept said donations with the appreciation and thanks of the City of Newburgh on behalf of its children, families and citizens, for their support and sponsorship of the City of Newburgh's annual Memorial Day and Fourth of July Observances, National Night Out, the Annual International Festival and the Halloween event for 2017.

RESOLUTION NO.: 76 - 2017

OF

MARCH 27, 2017

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AGREEMENTS WITH VARIOUS PARTIES
TO PROVIDE PERFORMING ARTS AND RELATED SERVICES
IN CONNECTION WITH THE CITY OF NEWBURGH'S
ANNUAL MEMORIAL DAY AND FOURTH OF JULY OBSERVANCES,
NATIONAL NIGHT OUT, THE ANNUAL INTERNATIONAL FESTIVAL AND
THE HALLOWEEN EVENT FOR 2017**

WHEREAS, the City of Newburgh annually holds Memorial Day and Fourth of July Observances, National Night Out, the Annual International Festival over the Labor Day holiday, and the Halloween Event; and

WHEREAS, it is appropriate and necessary to authorize the City Manager to enter into agreements by which performing artists, production services and necessary equipment and facilities shall be provided; and

WHEREAS, there is funding available in Trust and Agency Accounts for those events and in the 2017 City budget; and

WHEREAS, such agreements shall not exceed the funds in the Trust and Agency Accounts and the 2017 Budget; and

WHEREAS, this Council has determined that entering into agreements in connection with these annual events is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into agreements with terms and conditions as Corporation Counsel may require, with the performing artists and providers of related necessary services in connection with the Memorial Day and Fourth of July Observances, National Night Out, the Annual International Festival, and the Halloween Event for 2017, with the net cost to the City of such agreements not to exceed the Trust and Agency Account proceeds and 2017 Budget.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2017, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the “**CITY**,” with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and _____, a firm with principal offices at _____, hereinafter referred to as “**VENDOR**.”

ARTICLE 1. SCOPE OF WORK

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

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning _____, 2017, and ending _____, 2017.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule A, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY an itemized invoice for SERVICES rendered during the event as otherwise set forth in Schedule A, and prepared in such form and supported by such documents as the CITY may reasonably require. The

CITY will pay the proper amounts due VENDOR within sixty (60) days after receipt of a CITY Claimant’s Certification form, and if the Claimant’s Certification form is objectionable, will notify VENDOR, in writing, of the CITY’S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

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

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

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

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

ARTICLE 6. CONFLICT OF INTEREST

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

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

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

ARTICLE 7. FAIR PRACTICES

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

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

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

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

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

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and/or supplying goods and incurring expenses under this Agreement, VENDOR shall

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

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

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

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

to pay VENDOR'S employees for past service.

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

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

ARTICLE 10. BOOKS AND RECORDS

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

ARTICLE 11. RETENTION OF RECORDS

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

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic

inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INSURANCE

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

<u>Type of Coverage</u>	<u>Limit of Coverage</u>
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Worker's Compensation	Statutory
Employer's liability	\$1,000,000

or similar insurance	each occurrence
Automobile liability	\$1,000,000 aggregate
Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Comprehensive General Liability, including	\$1,000,000 aggregate
Broad form contractual Liability, bodily injury and property damage	\$2,000,000 each occurrence
Professional liability (If commercially available for your profession)	\$1,000,000 aggregate \$2,000,000 each claim

If available, VENDOR shall attach to this Agreement applicable certificates of insurance evidencing VENDOR'S compliance with these requirements.

ARTICLE 14. INDEMNIFICATION

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

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

agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF CITY PROPERTY

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

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

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

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

ARTICLE 16. CONFIDENTIAL INFORMATION

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

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

ARTICLE 17. TERMINATION

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

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

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

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

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

CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

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

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

ARTICLE 18. GENERAL RELEASE

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

ARTICLE 19. SET-OFF RIGHTS

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

ARTICLE 20. NO ARBITRATION

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

ARTICLE 21. GOVERNING LAW

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

ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES

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

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

ARTICLE 23. ENTIRE AGREEMENT

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

ARTICLE 24. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection

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

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

THE CITY OF NEWBURGH

VENDOR

BY: _____
Michael G. Ciaravino
City Manager
Per Resolution No. -2017

BY: _____
NAME:
TITLE:

DATE: _____

DATE: _____

SCHEDULE A

SCOPE OF SERVICES AND FEES AND EXPENSES

RESOLUTION NO.: 77 - 2017

OF

MARCH 27, 2017

**A RESOLUTION DECLARING A JOHN DEERE 35kW GENERATOR MODEL
4219DF01
DESIGNATED SERIAL #96227T, A 1989 DODGE RAM CHARGER
DESIGNATED VIN NO. 3B4HM17YOKM941373 AND A 2004 JEEP CHEROKEE
DESIGNATED
VIN NO. 1J4GW48S74C429368 TO BE SURPLUS EQUIPMENT**

WHEREAS, the City of Newburgh Fire Department possesses a John Deere 35kW Generator Model 4219DF01 designated Serial #96227T, a 1989 Dodge Ram Charger designated Vin No. 3B4HM17YOKM941373 and a 2004 Jeep Cherokee designated VIN No. 1J4GW48S74C429368 which are no longer of use to the City; and

WHEREAS, the Fire Department has requested that the generator and the vehicles be designated as surplus and sold; and

WHEREAS, the City Council has determined that declaring the generator and vehicles surplus is in the best interests of the City of Newburgh; and

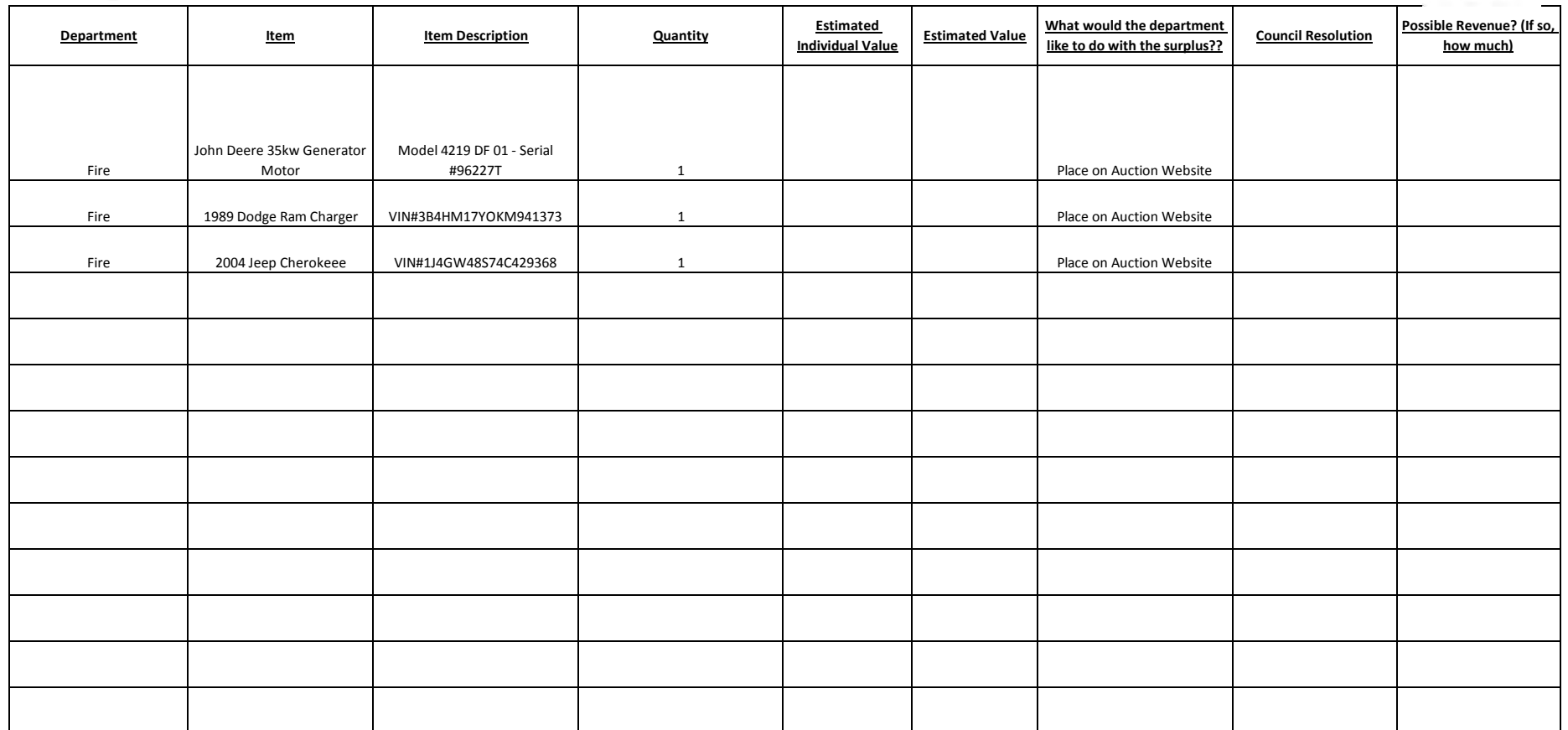
NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that a John Deere 35kW Generator Model 4219DF01 designated Serial #96227T, a 1989 Dodge Ram Charger designated Vin No. 3B4HM17YOKM941373 and a 2004 Jeep Cherokee designated VIN No. 1J4GW48S74C429368 are hereby declared to be surplus and of no further use or value to the City of Newburgh; and

BE IT FURTHER RESOLVED, that the City Manager and/or City Comptroller be and they are hereby authorized to execute any required documents and conduct all necessary transactions to dispose of said surplus generator and vehicles in accordance with the City of Newburgh's Surplus Property Disposition Policy and Procedure adopted by Resolution No. 174-2014 of July 14, 2014.



NEWBURGH, N.Y.

FIRE DEPT.



RESOLUTION NO.: 78 -2017

OF

MARCH 27, 2017

**A RESOLUTION AMENDING THE 2017 PERSONNEL ANALYSIS BOOK
TO RESTORE ONE FULL-TIME MECHANIC'S HELPER POSITION
IN THE DEPARTMENT OF PUBLIC WORKS**

WHEREAS, a Mechanic's Helper position in the Department of Public Works was deleted inadvertently from the 2017 Personnel Analysis Book; and

WHEREAS, the addition of the full-time Mechanic's Helper position requires the amendment of the City of Newburgh Adopted Personnel Analysis Book for 2017 and funding for such position will be derived from a vacant position which has not been filled; and

WHEREAS, the City Council has determined that restoring one full-time Mechanic's Helper position in the Department of Public Works will promote economy and efficiency within the Department; the same being 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 Personnel Analysis Book for 2017 be and is hereby amended to create one additional full-time Mechanic's Helper position in the Department of Public Works at Grade 8, Step 1.

RESOLUTION NO.: 79 -2017

OF

MARCH 27, 2017

**A RESOLUTION AMENDING THE 2017 PERSONNEL ANALYSIS BOOK
TO ADD ONE (1) LIEUTENANT POSITION ON A TEMPORARY BASIS
IN THE CITY OF NEWBURGH POLICE DEPARTMENT**

WHEREAS, the Police Department has advised the City Manager that the department is in need of an additional individual to perform the duties of “Lieutenant;” and

WHEREAS, the creation of the additional Police Department Lieutenant position will be on a temporary basis and funding for such position will be derived from vacant positions which have not been filled or backfilled; and

WHEREAS, the City Council has determined that adding one Lieutenant position in the Police Department will promote economy and efficiency within the Department; the same being 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 Personnel Analysis Book for the fiscal year 2017 be amended, and that there be and hereby is created one (1) additional position on a temporary basis in the job title “Lieutenant” in the Police Department.

RESOLUTION NO. 80 - 2017

OF

MARCH 27, 2017

**A RESOLUTION AUTHORIZING THE
EXTENSION OF TIME TO CLOSE TITLE ON THE PROPERTY
LOCATED AT 266 CARPENTER AVENUE
(SECTION 7, BLOCK 7, LOT 42) SOLD AT PRIVATE SALE
TO SUZANNE TIMMER**

WHEREAS, by Resolution No.: 267-2016 of October 11, 2016, the Council of the City of Newburgh, New York, authorized the sale of 266 Carpenter Avenue (Section 7, Block 7, Lot 42) to Suzanne Timmer; and

WHEREAS, the City Manager granted the sixty (60) day allotted extension to close title on said premises on or before March 14, 2017; and

WHEREAS, due to unforeseen circumstances, the purchaser has requested additional time to close title; and

WHEREAS, this Council has determined that granting the additional requested extension 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 an extension of time to close title for the property located at 266 Carpenter Avenue hereby authorized until May 14, 2017.

RESOLUTION NO.: 81 - 2017

OF

MARCH 27, 2017

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY
KNOWN AS 35 CONCORD STREET (SECTION 29, BLOCK 1, LOT 16)
AT PRIVATE SALE TO LAWRENCE D. SMITH FOR THE AMOUNT OF \$6,200.00**

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real property Tax law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 35 Concord Street, being more accurately described as Section 29, Block 1, Lot 16 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

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 authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before June 27, 2017, being ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
35 Concord Street	29 – 1 – 16	Lawrence D. Smith	\$6,200.00

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions of Sale
35 Concord Street, City of Newburgh
(29-1-16)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and 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.
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; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The properties are sold subject to unpaid school taxes for the tax year of 2016-2017, 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 2016-2017, 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.** The deed will contain provisions stating that the purchaser is required to rehabilitate any 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. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of 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 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.
6. Notice is hereby given that the property is vacant and unoccupied. The parcel is being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
7. 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.

8. 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.
9. 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. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser 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.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before June 27, 2017. Such closing costs/fees may include, but are not limited to: recording fees, tax adjustments as of the day of closing, fuel oil adjustments, and applicable condominium charges (e.g. monthly maintenance charges, assessment charges, transfer buy-in fees, and/or closing package ordering fees). *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. 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. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
11. 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. Purchaser agrees that he 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.
12. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh 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, his heirs, successors or assigns, against City of Newburgh arising from this sale.
13. 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.**
14. 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.
15. 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 ten (10) days in advance of closing title and approved by the City's Engineer.
16. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.

17. 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.: 82 - 2017

OF

MARCH 27, 2017

**A RESOLUTION AUTHORIZING THE CITY MANAGER OR THE
POLICE CHIEF AS MANAGER'S DESIGNEE TO EXECUTE AN
INTER-MUNICIPAL AGREEMENT WITH THE COUNTY OF ORANGE
CONFIRMING CITY OF NEWBURGH PARTICIPATION IN THE STOP-DWI
PROGRAM
FOR THE ENFORCEMENT PERIOD OF MARCH 14, 2017 TO JANUARY 1, 2018
AND TO ACCEPT AN AWARD NOT TO EXCEED \$3,083.60 COVERING 60
PERSON-HOURS
FOR THE FIRST ENFORCEMENT PERIOD OF 2017 (MARCH 14, 2017 – MAY 30,
2017)**

WHEREAS, the County of Orange (hereinafter "County") has provided the City of Newburgh (hereinafter "City") with an Inter-Municipal Agreement for a full year of participation to provide for the funding of the STOP-DWI Program within the City of Newburgh and an award notification for the enforcement period of March 14, 2017 and ending January 1, 2018; and

WHEREAS, the City of Newburgh agrees to participate in three (3) STOP DWI Program enforcement campaign periods as follows: First Enforcement Period – March 14, 2017 through May 30, 2017, which includes St. Patrick's Day and the Memorial Day holiday weekend; Second Enforcement Period – July 1, 2017 through September 5, 2017, which includes the Independence Day and Labor Day holiday weekend enforcement campaigns; and the Third Enforcement Period – November 1, 2017 through January 1, 2018, which includes Thanksgiving, Christmas and New Year's holiday 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, based on the data submittals submitted for the prior year the City of Newburgh is eligible for an award not to exceed \$3,083.60 covering 60 person-hours for the First Enforcement Period of 2017; and

WHEREAS, the County will notify the City in writing of its eligibility for awards, if any, for the second and third enforcement periods of 2017 by a separate written award letter prior to the commencement of each such enforcement period; 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 Manager or the Police Chief as Manager's designee be and he is hereby authorized to execute an Inter-Municipal Agreement with the County of Orange confirming the City's participation in the STOP-DWI Program for the period January 30, 2017 through January 1, 2018 in order to fund the additional cost of stepped-up police patrols and related court appearances and providing the City of Newburgh with an award not to exceed \$3,083.60 covering 60 person-hours for the First Enforcement Period of 2017 (March 14, 2017 through May 30, 2017); and

BE IT FURTHER RESOLVED, that the City Council of the City of Newburgh, New York that the City Manager or the Police Chief as Manager's designee be and he is hereby authorized to accept subsequent awards for the Second Enforcement Period (July 1, 2017 through September 5, 2017) and Third Enforcement Period (November 1, 2017 through January 1, 2018) covered by the 2017 STOP-DWI Agreement; and to execute all necessary documents to receive and comply with the terms of such Agreement and to carry out the program funded thereby.

ORANGE COUNTY, NEW YORK



Steven M. Neuhaus
County Executive

Coordinator
Craig Cherry
Deputy Commissioner
Police Liaison Services

Administrator
Christina Hale

STOP-DWI / Traffic Safety Programs

22 Wells Farm Road
Goshen, New York 10924
845-615-0575



TO: City of Newburgh

FROM: Craig Cherry, Orange County Stop-DWI Coordinator

DATE: February 22, 2017

Enclosed is your Department's contract for the 2017 STOP-DWI (Regular) enforcement patrol year funding beginning on March 14, 2017 and ending on January 1, 2018. The contract is for participation for the full year. The enclosed contract indicates the Not-to-Exceed total hours and/or dollar amount for the 1st Period beginning on March 14, 2017 and ending on May 30, 2017 in the amount of \$3083/60. You will be subsequently notified by letter of the awarded amount of the total dollars/hours for the 2nd and 3rd periods of the year. Please review the attached Schedule A of the contract for enforcement dates and reimbursement requirements.

Please sign and return this contract to the above address at your earliest convenience to insure that your Department can participate in the enforcement period. A Board Certified Resolution is required for the acceptance of this contract as well as for the authorization of a designated official to execute the contract for your municipality.

Also included in the mailing is a completion packet containing:

- Enforcement Patrol Sheet (Copy as needed)
- Patrol Summary Sheet – To be completed at the end of the enforcement period by compiling all Patrol Sheets.
- Final Reimbursement Claim Form – To include participating officers' names, hours and salary/overtime costs per patrol shift. **The maximum reimbursement will be time and one-half based on the participating officer's hourly salary rates and no hourly rate higher than that of your department's highest paid Sergeant will be approved.**

If you have any questions, please do not hesitate to contact me.

Your officers are the front line of defense in keeping our roadways safe from impaired and intoxicated drivers. On behalf of County Executive, Steven Neuhaus and Orange County's Stop-DWI Program, thank you to you and your officers for your commitment to patrolling and protecting the County.



INTER-MUNICIPAL AGREEMENT

THIS INTER-MUNICIPAL AGREEMENT ("IMA") is entered into this 30th day of January, 2017, 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, a City 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 ("STOP DWI Program"). The purpose of the STOP DWI Program is to coordinate and fund Orange County's town, city, and village efforts to reduce alcohol-related traffic injuries and fatalities. To facilitate this goal the COUNTY and the MUNICIPALITY recognize that police patrol enforcement campaigns are an effective tool towards ensuring safe and sober roadways.

It is the intention of the COUNTY, in order to carry out the goals of the STOP DWI Program, to award to the MUNICIPALITY funds in the manner set forth on Schedule A to be used solely to reimburse the MUNICIPALITY for man-hours dedicated to enforcement campaigns during the applicable campaign periods as more particularly described on Schedule A. The expenditure of these funds and all activity of the MUNICIPALITY relating to such funds, 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. TERM OF AGREEMENT

The term of this IMA shall commence on January 30th, 2017 and end January 11, 2018.

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 funds paid hereunder 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 of this IMA. 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 funds. 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 funds, 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.

The MUNICIPALITY shall, within five (5) business days written notice from the COUNTY, have all records associated with the funds awarded and the enforcement campaigns available for a physical inspection and/or audit by the COUNTY.

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 funds are delivered. 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 funds.

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 this IMA 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 the funds in accordance with this IMA and applicable provisions of all federal, State, and local laws, rules, and regulations.

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 and each award letter, 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

By: _____
Steven M. Neuhaus
County Executive

DATE: _____

MUNICIPALITY

By: _____
Name: _____
Title: _____

DATE: _____

SCHEDULE A-1
NEW YORK STATE VEHICLE AND TRAFFIC LAW §1197 FUNDS

ENFORCEMENT CAMPAIGNS/AGREEMENT TO PARTICIPATE.

MUNICIPALITY agrees to participate in three (3) STOP DWI Program enforcement campaign periods as follows:

First Enforcement Period – March 14, 2017 through May 30, 2017, which includes St. Patrick's Day and the Memorial Day holiday weekend.

Second Enforcement Period – July 1, 2017 through September 5, 2017, which includes the Independence Day and Labor Day holiday weekend enforcement campaigns.

Third Enforcement Period – November 1, 2017 through January 1, 2018, which includes Thanksgiving, Christmas, and the New Year's holidays enforcement campaigns.

Each of the three (3) enforcement campaigns coincides with state and national enforcement campaign efforts.

DATA SUBMITTAL.

MUNICIPALITY agrees to deliver to the COUNTY enforcement activity data in the form provided by the COUNTY, in its sole discretion, and required to be completed by the COUNTY, no later than ten (10) calendar days after the end of each enforcement period. Failure to timely submit the data may result in the MUNICIPALITY receiving the calculated minimum amount of hours/dollars for the next succeeding enforcement period or no award at all.

AWARD OF FUNDS.

Provided that MUNICIPALITY has performed in accordance with the terms of this IMA, the COUNTY, to the extent that funds are appropriated and available, will make up to three (3) awards of funds to support the MUNICIPALITY's STOP DWI Program enforcement campaigns. Each such award shall be data driven based upon the data submitted by the MUNICIPALITY to the COUNTY for enforcement activities occurring during the preceding enforcement period.

FIRST ENFORCEMENT PERIOD AWARD.

Based on data submittals from the MUNICIPALITY for the prior enforcement period October 14, 2016 through January 1, 2017, which submittals were required to be submitted to the COUNTY pursuant to a separate IMA between MUNICIPALITY and COUNTY, MUNICIPALITY is eligible for an award not to exceed \$3083 covering 60 man-hours for the first enforcement period of 2017. The actual award payment to MUNICIPALITY shall be that amount earned as a result of man-hours expended by the MUNICIPALITY for STOP DWI Program enforcement activities during each preceding enforcement period as supported by the data submitted by the MUNICIPALITY.

WRITTEN NOTIFICATION OF AWARDS FOR THE SECOND AND THIRD ENFORCEMENT PERIODS OF 2017.

COUNTY will notify MUNICIPALITY in writing of its eligibility for awards, if any, for the second and third enforcement periods of 2017 by a separate written award letter delivered to MUNICIPALITY prior to the

commencement of each such enforcement period. Each award letter shall state a not to exceed dollar value of the funds available to the MUNICIPALITY for reimbursement of man hours expended operating enforcement patrols during the applicable enforcement period and shall be annexed to and made a part of this IMA.

RESOLUTION NO.: 83 - 2017

OF

MARCH 27, 2017

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN OFFICE LEASE AGREEMENT WITH
THE UNITED WAY ORANGE DUTCHESS REGION FOR
A PORTION OF THE SECOND FLOOR OF 123 GRAND STREET
FOR A TERM OF ONE YEAR**

WHEREAS, the City of Newburgh has offered the City-owned premises at 123 Grand Street for rental; and

WHEREAS, the United Way Orange Dutchess Region has expressed an interest in leasing two offices on the second floor of said premises to establish a fixed office for its operations; and

WHEREAS, the term of the lease shall be one year and a copy of which is annexed hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such lease agreement and finds that entering into the same would be in the best interests of the City of Newburgh and the community alike;

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 lease agreement with the United Way Orange Dutchess Region for the use of two offices on the second floor of 123 Grand Street in substantially the same form and on the terms and conditions contained in the attached lease agreement, including such other terms and conditions as may be deemed appropriate and necessary by the City Manager and/or the Corporation Counsel in order to carry-out the subject transaction.

OFFICE LEASE

Landlord and Tenant agree to lease the Office in the Premises at the rent and for the term stated:

PREMISES: 123 Grand Street, Newburgh NY 12550

OFFICE NO.: 325 sq. ft.,
SW, second
floor

LANDLORD: City of Newburgh

TENANT: United Way Orange Dutchess
Region

Date of Lease: _____ **Annual Rent:** \$ 15,600.00

Lease Term: One year **Monthly Rent:** \$ 1,300.00

Commencement Date: April 1, 2017 **Security Deposit:** \$ 1,300.00

Possession Date: April 1, 2017 **Termination Date:** March 31, 2018

1. Use and Occupancy

Tenant shall only occupy and use two offices consisting of approximately 325 square feet of office space, southwest side, second floor, referenced above (the "Office") for one year.

2. Inability to Give Possession

The failure of Landlord to give Tenant possession of the Office on the Commencement Date shall not create liability for Landlord. In the event that possession of the Office is not delivered on the Commencement Date due to the holdover of a tenant, or, if a newly constructed building, a final or temporary certificate of occupancy has not been obtained, or for any other reason which is not due to Landlord's acts or negligence, the validity of this Lease shall not be affected. Monthly Rent hereunder shall begin on the date that possession of the Office is delivered to Tenant and shall be prorated for that portion of the month in which possession is delivered. The Termination Date shall in no event be extended if delivery of possession is delayed. If, with Landlord's permission and consent, Tenant is to occupy the Office or another office space prior to the Commencement Date, Tenant's occupancy is subject to all the terms, conditions and provisions of this Lease except for the payment of Rent and Additional Rent. The intent of this Paragraph is to constitute "...an express provision to the contrary..." contained in New York Real Property Law Section 223-a.

3. Rent

Tenant shall pay Monthly Rent in full on the first day of each month of the Lease. Monthly Rent shall be paid in advance with no notice being required from Landlord. Tenant shall not deduct any sums from the Monthly Rent unless Landlord consents thereto in writing.

Upon signing this Lease, Tenant shall pay Landlord the first Monthly Rent due and the Security Deposit. The entire amount of rent due for the Lease Term is due upon signing this Lease; however, Landlord consents to the Tenant paying same in monthly installments provided there exists no defaults by Tenant under the terms of this Lease.

4. Condition of Unit

Tenant acknowledges that Tenant is accepting the Office in its "as is" condition. Tenant further acknowledges that Tenant has thoroughly inspected the Office and has found the Office to be in good order.

5. Security

Tenant has deposited with the Landlord the Security Deposit to insure Tenant's compliance with all of the

terms, provisions and conditions of this Lease. If Tenant is in default under any of the terms, conditions and provisions of this Lease, Landlord may apply the Security Deposit, in whole or in part, to any sums Tenant owes Landlord, (including Rent), that Landlord expended or may have to expend due to Tenant's default, including but not limited to damages or insufficiency of rent in re-renting the Office. Within ten (10) days of the Termination Date, provided Tenant has vacated the Office and is not in default under any of the terms, conditions and provisions of this Lease and the physical condition of the Office is acceptable to Landlord upon surrender, the Security Deposit will be returned to Tenant at an address Tenant provides to Landlord.

6. Services

Provided Tenant is not in default of any of the terms, conditions and provisions of this Lease, Landlord shall provide: (a) elevator services on business days; (b) water for ordinary bathroom purposes, however, if Tenant uses water for any other purpose or in high quantities (which decision is in Landlord's sole judgment), a water meter may be installed by Landlord at Tenant's cost and expense, the maintenance and repair of which shall be exclusively that of Tenant, and all charges for water consumption as shown by said meter shall be promptly paid by Tenant; (c) heat to the Office, on business days, as required by law; (d) air conditioning on business days; and (e) electricity. Landlord reserves the right to interrupt the providing of the utilities, when Landlord deems it necessary for repairs, alterations, replacements or improvements to such utilities, the decision for such interruption and the length of such interruption shall be solely Landlord's.

7. Alterations

Absent Landlord's written consent, Tenant may make no alterations to the Office. With Landlord's written consent, Tenant, at Tenant's sole cost and expense, may make alterations, installations and improvements (the "Alterations") to the Office provided they are non-structural in nature, which do not affect the utilities or other operations or services of the Premises and which are done by contractors and sub-contractors approved by Landlord in every instance. Before making Alterations, Tenant shall obtain all permits, approvals, certificates required by any and all municipal authorities or other agencies having jurisdiction of the Premises and the Alterations and upon receiving same, Tenant shall deliver duplicate or certified copies to Landlord of each and every one. Tenant shall carry and cause to be carried by each contractor and sub-contractor, workmen's

compensation, general liability, personal and property damage insurance, in such amounts as Landlord requires, naming Landlord as insured and Tenant shall deliver evidence of such insurance to Landlord prior to Tenant's commencing the Alterations. Should a mechanic's lien be filed against the Office and/or Premises, for work done or claimed to have been done or materials supplied for Tenant or to the Office, Tenant shall pay or cause to be paid or file a bond in the amount stated in the mechanic's lien within thirty (30) days of said filing at Tenant's sole cost and expense. Any installation of materials, fixtures and the like shall become the property of Landlord upon such installation and shall remain in the Office upon Tenant's surrender of same. However, Landlord may relinquish such right of ownership to the installations by giving Tenant thirty (30) days written notice prior to the Termination Date of such relinquishment of ownership, in which event, they shall become Tenant's and must be removed upon the Termination Date. Nothing herein is meant to give Landlord any ownership rights in and to Tenant's trade fixtures, office furniture and equipment which can be easily moved. Upon the Termination Date and surrender of possession of the Office, Tenant shall remove all personal property and installations to which Landlord's ownership interest has been relinquished and Tenant shall immediately restore and repair the Office to that condition existing on the Commencement Date. Any and all property of Tenant remaining in the Office after the Termination Date shall be deemed abandoned by Tenant and Landlord may either retain such abandoned property or may remove such abandoned property at Tenant's expense.

8. Maintenance and Repairs

Tenant shall maintain the Office in good condition. Tenant shall be responsible for any and all damage to the Office or any other part of the Premises resulting from Tenant's willful acts or negligence or the willful acts or negligence of Tenant's agents, employees, invitees or licensees or which may arise from any work done by or for Tenant or by Tenant's business operations. Tenant shall also be responsible for any damage to the Premises caused by Tenant's moving or removal of furniture, fixtures and/or equipment. Tenant shall only use contractor and/or sub-contractors for these repairs which have been approved by Landlord in every instance. In the event that Tenant fails or refuses to make said repairs, Landlord may do so at Tenant's expense which shall be paid to Landlord as additional rent. Landlord shall maintain in proper order and repair the exterior of the Premises as well as the common areas and the utilities servicing the Premises. Tenant shall give immediate notice to Landlord of any defect or interruption of service or condition. The responsibility of Tenant to pay Rent shall not be reduced or abated by reason of injury to business or annoyance to employees of Tenant caused by repairs, alterations or improvements to the Premises or the Office. Likewise there shall be no liability on the part of the Landlord for such injury or annoyance as aforesaid. Should Landlord be in default under this Paragraph or any other Paragraph of this lease, Tenant's only remedy is to sue Landlord for breach of this Lease.

9. Window Cleaning

Tenant will not clean or caused to be cleaned any window in the Office from outside of the Office in violation of any of the provisions of the Labor Law or any law, provision or rule of any authority having jurisdiction thereof.

10. Damage, Fire or Other Casualty

In the case of fire damage or other damage to the Office not caused by Tenant, its agents, servants, employees, invitees and/or licensees, Tenant shall give Landlord immediate notice of same. (a) If the Office is partially damaged by fire or other casualty, Landlord shall repair the damage and the Rent shall be apportioned

from the day of the damage in relation to the portion of the Office that has been rendered unusable to the day that the Office has been repaired and is fully usable. (b) If the Office is totally damaged and rendered wholly unusable by fire or other casualty, Landlord has the right to either repair the damages or terminate the lease. (i) In the event that Landlord elects to repair the damages, Rent and Additional Rent shall be abated for the period of time from the date of occurrence of the damage to the date that Landlord notifies Tenant that the Office can be re-occupied; (ii) In the event that Landlord elects to terminate this Lease, Landlord may do so upon giving Tenant notice of his intent to do so within the sooner of ninety (90) days of the occurrence of the damages or thirty (30) days from the date that the insurance claim is adjusted which notice shall set forth a date on which the Lease shall expire, which date shall not be more than sixty (60) days from the date of such notice and upon which date this Lease shall terminate and all obligations owed by Landlord and Tenant to each other shall cease and all obligations due shall be paid from one to the other. Should this Lease not be terminated, Landlord shall make all repairs in an expeditious manner subject to delays beyond the control of Landlord. Tenant shall cooperate fully with Landlord after such damage is incurred in all of Landlord's reasonable requests to remove undamaged items in the Office. Before making claim against the other for damages as a result of fire or other casualty, each party shall look first to their respective insurance carrier. To the extent permitted by law and by the respective insurance policies, Landlord and Tenant hereby release and waive rights of discovery with respect to the above against the other or any one claiming through them. If this condition can only be obtained by paying an additional premium, then the one benefiting from such waiver shall pay the additional premium upon ten (10) days written notice and the one obtaining such insurance coverage is free from any other obligation with respect to waiver of subrogation. Tenant acknowledges that Landlord shall not be obligated to carry any insurance for the benefit of Tenant with respect to Tenant's personal property, equipment, inventory or the like and agrees that Landlord is not obligated to repair any damage to them. The provisions of New York Real Property Law Section 227 are waived by both parties and the provisions of this Paragraph shall be controlling.

11. Loss, Damage, Indemnity

Landlord shall not be liable for any loss, damage or expense to any person or property of Tenant or to property of others given to employees of the Premises. Landlord shall also not be liable for any theft of or by other tenants or otherwise, nor for injury or damage to persons or property resulting from any cause whatsoever, unless due to the willful acts of Landlord, its agents, servants and/or employees. Landlord shall not be liable for damages caused by construction in or about the Premises. Landlord shall not be liable for any damages if the windows are permanently or temporarily closed, darkened, covered and Tenant shall not be entitled to any abatement or reduction in rent as a result thereby nor shall same be grounds for Tenant's claim of eviction nor shall Tenant be released from any of the terms, conditions and provisions of this Lease. Tenant shall indemnify and hold Landlord harmless from all claims, liabilities, costs and expenses, including attorneys' fees, paid or incurred by Landlord as a result of any default by Tenant of the terms, conditions and provisions of this Lease for which Landlord is not covered or paid by insurance. In the event that an action or proceeding is brought against Landlord, Tenant, upon written notice from Landlord, will, at Tenant's sole cost and expense, retain counsel approved by Landlord to defend such action or proceeding.

12. Electricity

Tenant warrants that its use of electrical current will, at all times, not exceed the current capacity of the

electrical service into the Premises, or the risers or wiring installation. Tenant will not use or cause to be used equipment which will overload the existing service and installations or interfere with other tenants' electrical service. Any change in the character or nature of electrical service to the Premises and/or to the Office shall not impose liability on the Landlord for any loss or damage sustained by Tenant as a result thereof.

13. Occupancy

Tenant shall not, at any time, use or occupy the Office in violation of or contrary to the permitted uses contained in the Certificate of Occupancy for the Premises and/or the Office. Tenant has fully inspected the Office and is accepting the Office in its "as is" condition. Tenant has performed "due diligence" with respect to the Premises and accepts the Office subject to any and all violations, whether same are of record or not. Landlord makes no representations as to the condition of the Office except as specifically set forth herein and on the Rider to this Paragraph, if any.

14. Landlord's Alterations and Management

Landlord has the right to change the arrangement and/or location of entrances, hallways, passageways, doorways, doors, elevators, stairs or any other part of the Premises used by the general public, including toilets, and to change the name and/or number of the Premises. In the event that Landlord so changes as aforesaid, the same shall not constitute an eviction nor imposes any liability on Landlord for such election. Rent shall not be diminished or abated in such event as a result of any inconvenience, annoyance or injury to Tenant's business and Landlord shall have no liability therefore. Landlord may impose rules for the access to the Premises by Tenant's social or business guests as Landlord deems proper and necessary for the security of the Premises and Tenant shall not have any claim against Landlord for any damages resulting therefrom.

15. Condemnation

If the whole or any part of the Premises and/or Office is taken by condemnation or otherwise by any governmental authority for public or quasi-public use, this Lease shall be terminated as of the date that title is vested pursuant to said proceeding and Tenant shall not have any claim for the value of the remaining portion of this Lease and Tenant assigns to Landlord Tenant's interest in any award. Nothing contained herein shall prevent Tenant from making an independent claim to the authority for allowable expenses.

16. Legal Requirements, Insurance, Floor Capacity

Tenant shall, at its sole cost and expense, at all times under this Lease or prior to the Commencement Date if Tenant is in possession of the Office as provided herein, comply promptly with all laws, regulations and orders of all municipalities and their agencies having jurisdiction over the Premises and Office including, but not limited to fire and or insurance offices which shall impose any violation or notice of violation or affirmative obligation upon Landlord and or the Premises, whether or not concerning Tenant's use of the Office or the Premises. Tenant shall not be required to make any structural alterations and/or repairs unless Tenant, as a result of Tenant's unauthorized uses and/or operations of business, violated such laws, regulations and/or rules. Tenant may appeal or object to such violations, fines etc. provided Tenant has, in Landlord's sole judgment, secured Landlord with respect to same by either deposit of sufficient monies or by a surety bond in an amount and by a company satisfactory to Landlord, for all damages, penalties, expenses and interest, including reasonable attorneys' fees provided same does not subject Landlord to criminal liability or create a default under any lease and/or mortgage of Landlord's and does not result in a condemnation or eviction, in whole or in part. Such appeal or objection by Tenant must be undertaken in an

expeditious manner and at no cost to Landlord. Tenant shall not do or cause to be done any act contrary to all laws, rules and regulations or which would violate any provision of Landlord's policies of insurance or which would subject Landlord to liability to any person or entity for personal and/or property damages. Tenant shall not keep any substance in the Office which is in violation of any law, rule and/or regulation which would result in a cancellation of Landlord's policies of insurance. Tenant shall not use the Office in such a manner that the premiums for Landlord's policies of insurance would be increased over that rate in effect at the time the Tenant obtains possession of the Office. Any cost, expense, fine, damages and/or penalties incurred by Landlord as a result of Tenant's violation of any provision in this Paragraph shall be borne by Tenant and shall be paid to Landlord by Tenant as additional rent. In any action or proceeding, the schedule of premiums issued by Landlord's insurance carrier shall be conclusive evidence of the rate therefore. Tenant shall not place a load on the floor of the Office contrary to the maximum floor area load permitted by law and the certificate of occupancy. The placement of heavy machines, mechanical equipment and/or office equipment shall be approved by Landlord and shall be placed in such manner, in Landlord's sole judgment, by Tenant to avoid and prevent vibrations, noise and annoyance to other tenants.

17. No Mortgage or Assignment

Tenant shall not assign, mortgage and/or encumber this Lease or sublet the Office or allow the Office to be used by anyone other than Tenant without the prior written consent of Landlord. The transfer of the majority interest in Tenant shall be deemed an assignment for purposes of this Paragraph. Should this Lease be assigned or the Office sublet or used by anyone other than Tenant without Landlord's written consent, Landlord may collect rent from the persons or entity so occupying and using the Office should Tenant default in the payment of Rent but such collection by Landlord shall not be deemed a waiver of the provisions of this Paragraph or a consent to such assignment, sublet or use or a release of Tenant's obligations under this Lease. Any consent given by Landlord to Tenant under this Paragraph in one instance shall not act to be a consent or waiver of Landlord's rights in another.

18. No Other Space

Tenant is afforded no other rights to use any space in the Premises other than the Office.

19. Tenant's Defaults

A. If there is a default by Tenant under the terms of this Lease, other than the obligation to pay Rent, or Tenant vacates the Office prior to the Termination Date, or if an execution has been issued against the property of Tenant or Tenant whereby the Office is used and/or occupied by someone other than Tenant, or if this Lease be rejected in a Bankruptcy proceeding, or should Tenant not take possession of the Office with thirty (30) days from the Possession Date, the Landlord may notify Tenant of said default upon fifteen (15) days prior written notice to Tenant which sets forth Tenant's default(s) and should Tenant fail to completely cure said specified default(s) within said fifteen (15) days, or if the default(s), by its nature cannot be cured within said fifteen (15) days or should Tenant fail to undertake with diligent effort to cure the default(s) within said fifteen (15) days, then, in such event, Landlord may serve upon Tenant, a written five (5) day notice canceling this Lease and Tenant, at the end of said five (5) days shall vacate and surrender the Office and Tenant shall continue to remain liable as set forth under this Lease.

B. If Tenant shall be in default in the payment of Rent, or if the notice given pursuant to "A" hereinabove has expired or if Tenant is in default in payment of any other matter for which Tenant is liable to pay, then Landlord, without notice, (the giving of notice is hereby

expressly waived by Tenant), may re-enter the Office, by force or otherwise, and dispossess Tenant or other occupant, by any lawful manner, and remove their possessions and retake the Office. Tenant expressly waives the right to receive notice of such re-entry by Landlord and agrees that Landlord shall not be responsible for any damage sustained to the property of Tenant or other occupant. If there be an extension or renewal of this Lease and Tenant shall default under any term, condition and/or provision of this Lease, Landlord may cancel such renewal or extension upon three(3) days prior written notice to Tenant.

20. Bankruptcy

A. This Lease may be cancelled upon Landlord's prior ten (10) day written notice to Tenant if there be commenced a case, whether voluntary or involuntary, by or against Tenant or any other person or entity occupying the Office, in a bankruptcy court in any State, or if Tenant or any other person or entity occupying the Office, should make an assignment for the benefit of creditors under any law. Upon such event, Tenant or any other occupant shall not be entitled to possession of the Office and shall immediately vacate the Office and surrender same to Landlord.

B. It is expressly agreed that in the event of a termination of this Lease pursuant to "A" above, notwithstanding any other provision contained in this Lease, Landlord shall be entitled to receive from Tenant, as and for liquidated damages, the higher of (1) the maximum amount permitted by law or (2) an amount equal to the difference between the Rent from the date of termination as set forth pursuant to "A" above to the Termination Date and the fair and reasonable market rent for the same period of time. In computing such amount, the same shall be discounted at the rate of three (3%) percent. If the Office shall be re-rented during that period of time, the rent paid under the re-rental agreement shall be conclusive proof of the reasonable market rent.

21. Remedies

In the event of any default, re-entry by Landlord, termination and/or eviction by summary proceedings or otherwise (a) Rent up to the date of such re-entry and/or eviction or termination shall be due, (b) Landlord may re-rent the Office, in whole or in part, for a term equal to or in excess of the Termination Date, and Landlord may be free to grant such concessions or charge rent in excess of the Rent as the Landlord sees fit, and/or (c) Tenant shall be obligated to Landlord for liquidated damages ("Liquidated Damages") for such default, termination and/or eviction in an amount equal to the difference between the Rent and the rent to be charged up to the Termination Date and any charges incurred by Landlord including, but not limited to reasonable attorneys' fees, litigation costs and expenses, brokers' fees, advertising fees, maintenance charges in keeping the Office in good condition and charges incurred in getting the Office in a condition for such re-renting. Landlord's failure to re-rent the Office shall not affect or release Tenant from said liquidated damages. The Liquidated Damages shall be paid in monthly installment when Rent is due prorated over the remaining term of this Lease. Landlord may, in getting the Office in condition for such re-renting, make such alterations, repairs and/or decorations in the Office as in Landlord's sole judgment are necessary and such undertakings by Landlord shall not release Tenant from liability under the terms, conditions and provisions of this Lease. Landlord shall in no way be liable to Tenant for failing to re-let the Office or to collect rent from the new tenant. The rights afforded Landlord under this Paragraph are not exclusive and Landlord may avail itself of any and all remedies available to it under law. Tenant expressly waives any right of redemption Tenant may now have or will have should Tenant be evicted from the Office or dispossessed therefrom.

22. Fees and Expenses

Should Tenant default under any of the terms, conditions and/or provisions of this Lease, Landlord may, after giving notice if required and upon the expiration of any grace period set forth in this Lease, immediately and without prior notice to Tenant perform or cause to be performed Tenant's obligations. If in connection with the aforesaid, Landlord incurs any cost and/or expense or becomes obligated to pay money as a result thereof, including but not limited to legal fees, reasonable attorneys' fees, litigation expenses, Tenant shall pay to Landlord such monies, with interest. The foregoing cost, expense or payment of money by Landlord shall be paid by Tenant to Landlord within fifteen (15) days from the date Landlord bills Tenant. Should these billed amounts come subsequent to the Termination Date, Landlord may institute proceedings against Tenant for the recovery of same.

23. Access

Landlord or Landlord's agents, servants and/or employees may enter the Office for emergency purposes at any time and at any other reasonable time in order to make inspections and/or make repairs, alterations or additions as Landlord deems proper and/or necessary to the Office and/or the Premises. Tenant grants Landlord the right to use the Office to replace and/or maintain the HVAC services and facilities. For this purpose, Landlord may bring into the Office all necessary materials and supplies and same shall not be deemed to give Tenant any right to claim an actual or constructive eviction or any right to an abatement of Rent or to a claim for damages as a result of loss of or interruption of Tenant's business. During the term of this Lease, Landlord shall have the right to enter the Office, at reasonable times and upon reasonable notice, for the purpose of exhibiting same to prospective purchasers and mortgagees. Landlord shall also have the right, within the six months prior to the Termination Date, to enter the Office for the purpose of exhibiting same to prospective tenants. Should Tenant not be present to allow access to the Office, Landlord may enter the Office by using a master key or by force providing Landlord exercises reasonable care to insure Tenant's property and such entry shall not subject Landlord or its agents liable for any damages as result thereof and the obligations of Tenant under the terms, conditions and/or provisions of this Lease shall not be affected thereby. Should Tenant entirely vacate the Office within thirty (30) days of the Termination Date, Landlord may enter the Office and make such alterations, repairs, additions or changes without affecting Tenant's obligations under this Lease, including, but not limited to Tenant's obligation to pay Rent or creating liability for Landlord to Tenant.

24. Waiver

The failure by Landlord to seek redress or any remedy for Tenant's default under any of the terms, conditions and/or provisions of this Lease or of any rule imposed and declared by Landlord shall not constitute a waiver by Landlord for any future defaults or violations. Landlord's receipt of Rent at a time when Landlord has knowledge or should have knowledge of any default or violation shall not be deemed a waiver thereof. Only a written waiver signed by Landlord shall be effective and binding upon Landlord. Any Rent received by Landlord which is less than the amount due shall be deemed to be "on account" and any notation or statement on Tenant's check shall be deemed payment in full or accord and satisfaction and Landlord may accept such payment without prejudice to Landlord's right to pursue such available remedy for the balance of same or for any other remedy afforded Landlord under the terms, provisions and/or conditions of this Lease. Only a surrender of the Office in writing signed by Landlord shall be effective and binding upon Landlord and/or Tenant and such surrender must be made to Landlord or Landlord's authorized agent. An acceptance of a surrender of the Office and keys to same by persons other than Landlord or its

authorized agent shall be effective as a termination of this Lease.

25. Landlord's Inability To Perform

Tenant's obligation to pay Rent and/or to comply with any of the terms, provisions and/or conditions of this Lease as well as the Lease itself shall not be affected, impaired, amended or excused due to Landlord's inability to perform any of its obligations contained in this Lease, or to supply any if delayed in supplying any service or item or is unable to make, or is delayed in the making of any repair, alterations, additions, or is unable to supply or is delayed in supplying any equipment, services, fixtures or any other material to be supplied hereunder, provided that Landlord is unable to do so because of labor problems, strife or strike or any other cause whatsoever including, but not limited to war or other emergency.

26. Excavations

In the event that there be an authorized excavation conducted upon lands adjacent to the Premises, Tenant shall allow the parties conducting same entry into the Office for the purpose of performing necessary work as such party deems necessary to shore up and/or preserve the wall of the Premises from damage including but not limited to supporting the existing exterior walls and foundations. Tenant further agrees to waive any right Tenant may have to make a claim for damages caused thereby or indemnity therefore from that party or Landlord or for an abatement of Rent.

27. No Representations by Landlord

Landlord and/or Landlord's agents, servants and/or employees have not made any representations nor promises of any kind to Tenant as to the physical condition of the Premises and/or Office or as to the financial condition and health or as to the operation of the Premises except as specifically set forth in this Lease and Tenant does not acquire any rights, easements or licenses except as specifically set forth in this Lease. Tenant has accepted the Office in its "as is" condition after having thoroughly inspecting same and without relying on any representations made by Landlord, its agents, servants and/or employees. Tenant's occupation of the Office is conclusive proof that the Office and Premises are in broom clean condition at the date Tenant first occupies the Office.

28. Non-merger

All prior agreements, understandings and representations are merged in this Lease which fully expresses the parties' agreement and this Lease may only be amended or modified or terminated, other than on the Termination Date, by written agreement signed by Tenant and Landlord.

29. Non-Disturbance

As long as Tenant pays Rent and complies fully with all of the terms, provisions and conditions of this Lease on Tenant's part to be performed, Tenant may peacefully occupy the Office subject too any mortgage, ground lease or underlying lease.

30. Waiver

Tenant and Landlord hereby waive trial by jury in any action, proceeding or litigation brought by one against the other or in which either party is brought in by a third party, except for personal injury or property damage actions, in which any of the terms, provisions and/or conditions of this Lease or any statutory remedy is involved or the use and/or occupancy of the Office is at issue. Tenant and Landlord agree that in any action seeking possession of the Office, Tenant will not impose any counterclaim or set-off against Landlord of any kind or nature except if mandated by statute.

h31. Notices

31. Notices

Any notice, statement or communication which Landlord is to give to Tenant, shall be deemed to be sufficiently given if it is in writing and delivered personally to Tenant or sent by certified mail or overnight courier addressed to Tenant at the Office or other business address of Tenant or at the residence of Tenant or left at any one of the addresses and the time of giving such notice, statement or communication shall be deemed given at the time same are left with or mailed or delivered to the overnight courier. Any notice to be given by Tenant to Landlord must be given by certified mail or overnight courier at Landlord's address above.

32. Rules

Tenant, its agents, servants and/or employees, licensees, business guests or visitors shall comply strictly and faithfully with the Rules that Landlord may adopt, at any time, notice of which shall be given to Tenant. Landlord may choose the manner in which said notice is given. In the event that Tenant disputes the reasonableness of any Rule, Tenant and Landlord agree to submit such dispute to the American Arbitration Association, New York, New York for binding arbitration provided Tenant gives written notice to Landlord within twenty (20) days of receipt of notice of adoption of the Rule or Rules. Notwithstanding the provisions of this Paragraph, Landlord is not under any obligation to enforce the Rules with respect to any other tenant in the Premises or to enforce any term, condition or provision of any other lease. Landlord is not liable to Tenant for any damages caused by another tenant violating the Rules or any term, provision or condition of that tenant's lease.

33. Definitions

Wherever and whenever used in this Lease, the following definitions shall be ascribed to these words:

a) "Business Day" shall mean the days of the week except Saturday and Sunday and except legal holidays observed by either State or Federal Governments and those set forth in any union contract which applies to the Premises

b) "Office" or "Offices" shall not mean Premises but shall mean premises other than those utilized for the sale of goods and merchandise or for the display of same, or a restaurant, shop, machine shop, manufacturing plant or other retail establishment.

c) "Landlord" shall mean the owner of the Premises or a lessee thereof, or a mortgagee in possession and should there be a sale or lease of the entire Premises, Landlord is released from all obligations and liabilities under this Lease and it will be conclusively presumed that the purchaser or lessor will perform the obligations and liabilities of Landlord herein.

d) "Re-enter" and "Re-entry" are not to be strictly taken in their legal definitions.

34. Estoppel Certificate

Upon fifteen (15) prior written notice to Tenant, Tenant shall execute and deliver to Landlord or to any other entity that Landlord directs, a certificate, in recordable form, stating that the Lease, as it exists on the date of the certification, is in full force and effect, that it has not been amended, modified or terminated, the date to which Rent has been paid and setting forth specifically if any defaults exist on the part of Landlord.

35. Subordination

The Lease is subject and subordinate to all existing and future mortgages or ground leases or underlying leases which affects the Premises and to all renewals, modifications or replacements thereof without the necessity of any notice or written instruments and Tenant shall, at Landlord request, execute a document to this effect.

36. Surrender of Office

Upon the Termination Date or other termination of this Lease, Tenant shall vacate and surrender the Office

in as is condition and in good condition, reasonable wear and tear excepted and free from Tenant's property. All damages which were caused by or on behalf of Tenant shall be repaired by Tenant at Tenant's sole cost and expense prior to the surrender of the Office. This Paragraph survives the Termination Date or the date of other termination of this Lease. Should the Termination Date be a Sunday or legal holiday, the Termination Date shall be the immediate previous day.

37. Parties Bound

This Lease is binding upon Landlord and Tenant and their respective assignees and/or successors in interest. Should Tenant obtain a judgment against Landlord,

Tenant shall look only to Landlord's interest in the Premises for the collection of same.

38. Paragraph Headings

Paragraph headings are for reference only.

39. Effectiveness

This Lease shall become effective as of the date when Landlord delivers a fully executed copy hereof to Tenant or Tenant's attorney.

40. Riders

Additional terms are contained in the riders annexed hereto and designated Rider N/A.

This Lease has been entered into as of the Date of Lease.

LANDLORD

TENANT

Michael G. Ciaravino, City Manager
Per Res. No.

RESOLUTION NO.: 84 - 2017

OF

MARCH 27, 2017

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT
A NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT
IN THE AMOUNT OF \$10,000.00 FOR BODY WORN CAMERA TRANSFER
STATIONS AND COMMUNITY POLICING SUPPLIES**

WHEREAS, the City of Newburgh has been awarded a New York State Division of Criminal Justice Services Edward Byrne Memorial Justice Assistance Grant in the amount of \$143,139.00; and

WHEREAS, such grant funding will be used to purchase 3 body worn camera transfer stations and community policing supplies to support the work of the City of Newburgh Police Department; and

WHEREAS, this Council has determined that accepting such grant would be in the best interests of the City of Newburgh and the City of Newburgh Police Department;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept from the New York State Division of Criminal Justice Services Edward Byrne Memorial Justice Assistance Grant in the amount of \$10,000.00 to purchase 3 body worn camera transfer stations and community policing supplies; and

BE IT FURTHER RESOLVED, that the City Manager is authorized to execute any documents and to take appropriate action to effectuate the purposes of the grant and the program funded thereby.

RESOLUTION NO.: 85 - 2017

OF

MARCH 27, 2017

**A RESOLUTION DECLARING APRIL 28, 2017 AS ARBOR DAY
IN THE CITY OF NEWBURGH**

WHEREAS, Arbor Day has been observed since 1872, when J. Sterling Morton proposed that the Nebraska Board of Agriculture set aside a Special Day in April to plant a million trees; and

WHEREAS, Trees give us many benefits: they clean the air, produce oxygen, absorb carbon dioxide, prevent soil erosion, help manage stormwater, give us shade, create wildlife habitat, increase property values and add beauty to our streets and wherever trees are planted, they are a source of joy and renewal; and

WHEREAS, The City of Newburgh is proud to have earned the “Tree City USA” designation for over a decade and we look forward to continuing to green our City for the betterment of our community;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newburgh, that April 28, 2017 shall be declared as Arbor Day in the City of Newburgh; and that the Mayor of the City of Newburgh shall issue the attached proclamation urging all residents to plant and care for trees, knowing that **TREES ENHANCE OUR WELL-BEING AND ARE LIVING LEGACIES FOR FUTURE GENERATIONS TO ENJOY.**

CITY OF NEWBURGH

ARBOR DAY PROCLAMATION 2017



Arbor Day has been observed since 1872, when J. Sterling Morton proposed that the Nebraska Board of Agriculture set aside a Special Day in April to plant a million trees.

Trees give us many benefits: they clean the air, produce oxygen, absorb carbon dioxide, prevent soil erosion, help manage stormwater, give us shade, create wildlife habitat, increase property values and add beauty to our streets. Wherever trees are planted, they are a source of joy and renewal.

The City of Newburgh is proud to have earned the **“Tree City USA”** designation for over a decade. We look forward to continuing to green our City for the betterment of our community.

NOW, THEREFORE, I, Judy Kennedy, Mayor of the City of Newburgh, do hereby proclaim April 28, 2017 as Arbor Day in the City of Newburgh, and I urge all residents to plant and care for trees, knowing that **TREES ENHANCE OUR WELL-BEING AND ARE LIVING LEGACIES FOR FUTURE GENERATIONS TO ENJOY..**

JUDITH L. KENNEDY, MAYOR

RESOLUTION NO.: 86 -2017

OF

MARCH 27, 2017

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
RESCHEDULING THE APRIL 6, 2017 WORK SESSION AND
APRIL 10, 2017 REGULAR MEETING**

WHEREAS, it is necessary to reschedule the April 6, 2017 City Council work session and April 10, 2017 City Council regular meeting; and

WHEREAS, pursuant to City Charter Section C4.01(E), the City Council may change the date, time or place of any regular meeting by passing a resolution at the immediately preceding regular meeting;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that pursuant to City Charter Section C4.01(E) that the April 6, 2017 City Council work session be rescheduled to April 5, 2017 and the April 10, 2017 City Council regular meeting be rescheduled to April 6, 2017.

RESOLUTION NO.: ____87____-2017

OF

MARCH 27, 2017

**A RESOLUTION APPOINTING DANIEL GILBERT
TO THE BOARD OF ASSESSMENT REVIEW**

WHEREAS, it is necessary to appoint a new member to fill a vacancy on the Board of Assessment Review; and

WHEREAS, each member of such Board serves a five-year term;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the following individual be and is hereby appointed to the Board of Assessment Review for the term indicated:

Daniel Gilbert, to serve a new five-year term commencing retroactively on October 1, 2016 and expiring on September 30, 2021.

January 31, 2017

Citizens of Newburgh and City Council
City Hall
83 Broadway
Newburgh NY, 12550

Dear Citizens of Newburgh and City Council,

I am writing today to express my interest in becoming a member of the City of Newburgh Board of Assessment Review. As a Real Estate professional with over 5 years experience in downtown Newburgh, and someone who is passionate about its restoration, I believe I have the relevant experience and dedication to fill this position.

1. Education

I attended Pace University's Lubin School of Business from 2009-2013 to pursue a degree in Entrepreneurship Studies. I currently plan to take graduate classes in the near future. In addition I have completed both the NYS Real Estate Salesperson and NYS Real Estate Broker classes.

2. Experience

- A) Appropriate tax valuations come from good analysis of county and local records, a frequent activity of mine.
- B) I have presented to the Architectural Review Board, and have attracted federal money to Newburgh, in the form of grants, to restore historic properties.
- C) I am well versed with the HGAR MLS, the most comprehensive real estate database in the Hudson Valley, used for valuing properties.

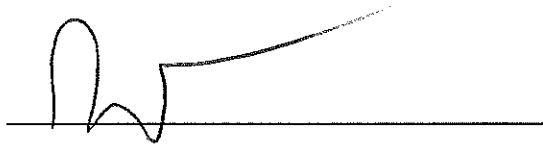
3. Purpose

To advocate for fair and equitable tax valuation to benefit both the City of Newburgh and its property owners. Accurate tax valuations will create a solid foundation to assist the City in continued growth and renewal.

4. Organizations

- As a Realtor®, I abide by a strict, industry standard ethics pledge.
- I serve my community, for over 8 years, as a Volunteer Outdoor Emergency Care Certified Member of the National Ski Patrol.
- I was a co-organizer for the Brick Street Block Party in Audrey Carey Park, 2015, a fundraiser and public awareness project to benefit Habitat for Humanity of Greater Newburgh.

In closing, I would like this opportunity to use my professional experience to give back to my community. In advocating for the City of Newburgh I hope to assist in moving it forward with positive growth and development.

A handwritten signature in black ink, appearing to read 'Daniel J. Gilbert', written over a horizontal line.

Daniel J Gilbert,

Licensed NYS Real Estate Agent, Resident City of Newburgh
261 Liberty St.
Newburgh NY, 12550

RESOLUTION NO.: 88 - 2017

OF

MARCH 27, 2017

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE IN REM TAX FORECLOSURE
OF LIENS FOR THE YEAR 2014 RELATIVE TO
66 LANDER STREET (SECTION 23, BLOCK 7, LOT 9)**

WHEREAS, The City of Newburgh commenced a proceeding for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2014-8858; and

WHEREAS, property owner J&M Realty LLC by Josef Mendlovic, Managing Member, served an Answer to such action in regard to the foreclosure of 66 Lander Street (Section 23, Block 7, Lot 9); and

WHEREAS, Mr. Mendlovic has advised the City that he is prepared to settle such action; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its further development to settle this matter without the need for litigation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Director of Finance and Enforcing Officer be and she is hereby authorized to withdraw the liens on the property located at 66 Lander Street (Section 23, Block 7, Lot 9), City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Nineteen Thousand Fifty-One and 20/100 (\$19,051.20) Dollars representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, water charges and sewer charges, are all paid in full by certified or bank check on or before April 30, 2017, or by remitting to the City of Newburgh the required down payment in the amount of Three Thousand Six Hundred Eighty-Seven and 45/100 (\$3,687.45) Dollars and duly entering into an installment payment agreement for the full payment of all taxes, interest and penalties for delinquent taxes on or before April 30, 2017; and thereafter satisfying said installment payment agreement in full.

ORDINANCE NO.: 7 - 2017

OF

MARCH 17, 2017

AN ORDINANCE AMENDING CHAPTER 240, ENTITLED "RENTAL PROPERTIES" OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH TO ENACT ARTICLE II ENTITLED "TENANT RESPONSIBILITIES"

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 240, Rental Properties be and is hereby amended to enact Article II, Tenant Responsibilities to read as follows:

SECTION 1: Article II. Tenant Responsibility for Maintenance of Rental Property

§ 240-18. General requirements.

Tenants of rental property shall maintain the rented premises in conformance with the following standards. Tenants shall only be responsible for conditions that he or she actually caused. The requirements of this Article are not intended to conflict with or supersede New York State Real Property Law Section 235-b.

§ 240-19. Common, public or open areas.

- A. Steps, walks, driveways, parking spaces and similar paved areas shall be kept free of obstacles to afford safe and convenient passage. Structural repairs are the responsibility of the property owner.
- B. Yards, courts and vacant lots shall be kept clean and free of hazards.
- C. Open fires shall not be permitted, unless authorized and approved pursuant to the Code of the City of Newburgh, the New York State Uniform Fire Prevention and Building Code, the New York State Property Maintenance Code and any applicable fire prevention code and in conformity with state air pollution control regulations.

§ 240-20. Buildings and structures.

- A. Floors, walls, including windows and doors, ceilings and other interior surfaces within the rental property shall be maintained in clean and sanitary condition in accordance with the Code of the City of Newburgh, the New York State Uniform Fire Prevention and Building Code, the New York State Property Maintenance Code and shall not be broken, damaged or destroyed and/or permitted to attract insect, vermin and rodent harborage and infestation.

- B. Extension cords. Electrical extension cords shall be used only in conformance with the Code of the City of Newburgh, the New York State Uniform Fire Prevention and Building Code, the New York State Property Maintenance Code. If extension cords must be used, they must be used on a temporary basis only; properly sized for the use; must not cross any pathways, or be placed under carpets or rugs. They also should not be a tripping hazard.
- C. Electrical.
1. Tenants who are not licensed electricians shall not do any electrical work and shall not permit third parties who are not licensed electricians to do such electrical work. Tampering with any electrical wiring in any way is prohibited.
 2. Tenants or third parties who are licensed electricians must obtain proper permits before commencing and completing any work.
 3. Electrical light fixtures and other heat-generating appliances shall not be covered with fabric or other combustible material.
- D. External decorative lighting, including but not limited to holiday lighting, shall not be hung by tacks or nails in such a manner as to create a fire hazard.
- E. Excessive amounts of loose fabric when used as a wall or ceiling covering is a fire hazard and is not permitted.
- F. Tenants may not store or place anything in such a way that it might block or prevent the use of a means of exiting from a room, rooming unit, dwelling unit or building. Items should not be stored by tenants in unfinished areas of buildings (cellars, attics, etc.), which could contribute to combustion in a fire or block access by emergency personnel. (i.e., mattresses, old boxes, lumber, clothes, etc.).
- G. Fire escapes shall not be used for storage and shall be kept clear to allow for immediate egress from a room, rooming unit, dwelling unit or building.
- H. Tenants shall not store combustible or flammable liquids and/or flammable gasses in their dwelling unit or rooming unit, or in accessory buildings, except in sealed, approved containers.
- I. Flammable and combustible liquids and/or gasses shall not be stored in hallways, exits, stairways or areas normally used for the safe passage of people.
- J. Unfinished areas of buildings, such as cellars or attics, shall not be used for any activities whatsoever other than for utility purposes.
- K. Rugs or carpet shall not be installed in such a way as to obstruct the smooth opening or closing of any doors.
- L. Cooking and refrigeration appliances, kitchens, and bathrooms must be kept in a clean and sanitary condition so as not to attract insect, vermin and rodent harborage and infestation.
- M. Food garbage shall not be stored on premises in such a way or for such a period of time so as to become a health hazard.

§ 240-21. Infestation and harborages.

Grounds, buildings and structures shall be maintained free of insect, vermin and rodent harborage and infestation. The accumulation and/or storage of materials that may provide harborage or serve as food for rodents or other vermin in a site accessible to such rodents or vermin is prohibited.

§ 240-22. Garbage and refuse.

- A. Adequate sanitary facilities and methods shall be used for the collection, storage, handling and disposal of garbage and refuse within rental property. Storage containers within rental property shall be of an approved flame-resistant material.
- B. The accumulation or storage of garbage or refuse in public halls or stairways shall be prohibited.
- C. Tenants should not place loose bags of garbage and or recyclables outside the building or in a garage area and shall comply with the waste collection regulations as prescribed by Chapter 183 of the City Code of Ordinances.
- D. Tenants shall not store or leave interior furniture outdoors except for disposal in accordance with Chapter 183 of the City Code of Ordinances and applicable rules and regulations of the Department of Public Works.

§ 240-23. Junk.

- A. Refrigerators, and similar equipment with locking mechanisms, shall not be discarded, abandoned or stored on premises accessible to children, without first removing the locking devices or the hinges of the doors.
- B. Junked vehicles, unregistered vehicles, equipment and materials shall not be stored in common, shared and/or open areas of premises.

§ 240-24. Domestic animals and pets.

Domestic animals and pets shall be kept in an appropriate manner in accordance with Chapter 150 of the City Code of Ordinances. Any tenant having ownership, custody or control of a dog or other domesticated companion or working animal shall be responsible for promptly picking up, collecting and disposing of any and all waste products of such animal in a sanitary manner.

§ 240-25. Smoke detectors; carbon monoxide detectors; fire extinguishers; sprinkler systems.

- A. Smoke detectors and carbon monoxide detectors shall not be removed, damaged or disabled in any way. Smoke and carbon monoxide detectors shall not be disabled by the tenant(s).
- B. The detectors shall not be disconnected from a power source or rendered inoperable in any way. Tenants shall not remove batteries in smoke detectors or carbon monoxide detectors located in a rental property.
- C. It shall be the duty of the tenant(s) of any rental property to keep and maintain such detectors located within their dwelling unit, or sleeping room, in good repair and operable condition and to notify the property owner to replace any and all devices which are stolen, removed,

missing or rendered inoperable during their tenancy of such dwelling unit with an identical device or an equivalent device, as approved by the owner.

- D. Fire extinguishers shall not be used for any purpose other than that for which they were designed. Tenant shall notify the Fire Department upon discharging a fire extinguisher to extinguish a fire.
- E. Tampering with sprinkler systems in any way and hanging items from sprinkler systems and sprinkler equipment is prohibited.

§ 240-26. Exits; hardware for doors.

- A. Prohibited locking devices. No hasp, lock, padlock, bar, chain or other device, which is openable only from the exterior, shall be installed by a tenant(s) on any door, which is used or intended to be used, as a means of egress.
- B. Locking devices required.
 - 1. It is the responsibility of all property owners to ensure that exit doors from dwelling units, and doors from bedrooms, sleeping rooms or lodging units which are located within dwelling units, rooming or boarding houses, in which three or more unrelated individuals reside, shall be equipped with a locking device which is securable by means of a key from the outside and which is provided, on the inside, with a simple type of releasing device, such as a knob, handle or panic bar, the method of operation of which is obvious, even in darkness. No tenant shall remove and/or disable said locking devices.
 - 2. It is the responsibility of all property owners to ensure that all openable windows located within 10 feet, measured vertically, or within six feet, measured horizontally, of ground level, or of exterior balconies, porches, stairs, fire escapes, railings, roof surfaces or any other accessible structure, shall be equipped with sash locks designed to be openable from the inside only. Sash locks shall be easily openable without the use of keys and be maintained in good repair. No tenant shall remove and/or disable said sash locks.
- C. Self-closing doors shall not be blocked in the open position, and automatic doors shall not be removed.
- D. Tampering with exit lights and exit signs is prohibited. If exit lights are out or malfunctioning, the property owner must be notified.

§ 240-27. Violations and enforcement.

- A. Whenever the municipal officer finds that there has been a violation of these standards, the municipal officer shall issue a notice of violation to the person or persons responsible. The order shall:
 - 1. Be in writing.
 - 2. Identify the premises.
 - 3. Specify the violation and remedial action to be taken.
 - 4. Provide a reasonable time limit for compliance.
 - 5. State the time within which an appeal may be taken.

6. If the violation constitutes a public nuisance or renders the premises dangerous or unsafe, include, in the order, a statement that if the violation is not remedied within the time limit specified in the order, the City may remedy the violation in accordance with Chapter 126 and Chapter 226 of the City Code of Ordinances.
- B. A notice of violation and order may be served as follows:
 1. By personal service upon the tenant(s).
 2. By posting a copy thereof on the door of the tenant(s) premises, or if access thereto is denied, by posting a copy thereof on the outside door of the building and mailing a copy to the tenant(s) in a postpaid wrapper addressed to the tenant(s).
- C. In case the tenant(s) shall fail, neglect or refuse to remove, eliminate or abate the violation, or in the case that the owner, lessor or agent fails to cause the tenant(s) to remove the violation within the time specified, the municipal officer shall forward the notice of violation to the Corporation Counsel who shall prosecute same as provided herein.
- D. If the violation constitutes a public nuisance or renders the premises dangerous or unsafe, and the violation order has been served, but the violation has not been remedied within the time limit specified in such violation order, the City may remedy the violation in accordance with Chapter 126 and Chapter 226 of the City Code of Ordinances.

§ 240-28. Penalties for offenses.

Failure to comply with a violation order, within the time limit stated therein, shall constitute an offense. A person convicted of an offense shall be punished by a fine not to exceed \$500, or in the court's discretion, a sentence of community service in accordance with the the New York State Penal Law. Each day that a violation continues shall be deemed a separate offense and so subject the occupant to an additional penalty as provided above.

§ 240-29. Violations constitute substantial obligation of tenancy.

Unless otherwise provided for by state or federal law or the provisions of a lease, the compliance with the provisions of this chapter shall constitute a substantial obligation of every residential tenancy and the violation thereof shall be grounds for termination of the tenancy.

SECTION 2. This ordinance shall take effect immediately upon adoption.

RESOLUTION NO.: 44 - 2017

OF

FEBRUARY 27, 2017

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
AMENDMENT NO. 1 TO THE AGREEMENT FOR PROFESSIONAL ENGINEERING
SERVICES WITH ARCADIS OF NEW YORK, INC. IN CONNECTION WITH
THE SOUTH WATER STREET SEWER SEPARATION PROJECT
IN AN AMOUNT NOT TO EXCEED \$144,500.00**

WHEREAS, the City of Newburgh has identified certain sewer connections which discharge directly to the City's combined sewer overflows rather than to the City's waste water treatment plant; and

WHEREAS, the City is obligated to further investigate such illicit sewer discharges and implement permanent solutions to remediate such discharges; and

WHEREAS, the City of Newburgh through a competitive process in which proposals for professional services were solicited, reviewed and evaluated to provide Engineering Services for the remediation of illicit sewer discharges in the area of South Water Street and Washington Street; and

WHEREAS, by Resolution No.:171-2014 of July 14, 2014, the City Council authorized the City Manager to accept a proposal and execute a contract with Arcadis of New York, Inc. for professional engineering services in connection with the South Water Street Sewer Separation Project in an amount not to exceed \$82,250.00 for the purpose of managing the Project, collecting data and developing alternative solutions; and

WHEREAS, Arcadis of New York, Inc. has submitted a letter proposal for Amendment No. 1 to its contract for additional professional engineering services to complete the construction phase of the South Water Street Sewer Separation Project as required the Schedule of Compliance of the LTCP; and

WHEREAS, the scope of services will include preparation of bid documents, permitting and regulatory approval, bidding assistance, construction administration and inspection and oversight; and

WHEREAS, the cost of said services to be performed is an amount not to exceed \$144,500.00 and funding for such project shall be derived from HG1.8130.0208.8118.2016—LTCP-South Water St Separation and Pump Station Proj—2016 BAN; and

WHEREAS, this Council determines that accepting the proposal and executing Amendment No. 1 to the contract with Arcadis of New York, Inc. in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept the letter proposal and execute Amendment No. 1 to the Agreement with Arcadis of New York, Inc. for professional services to complete the construction phase of the South Water Street Sewer Separation Project as part of the Long Term Control Plan, with other provisions as Corporation Counsel may require, in an amount not to exceed \$144,500.00.

Mr. Jason Morris, P.E.
City Engineer
City of Newburgh
83 Broadway
Newburgh, New York 12550

Arcadis of New York, Inc.
855 Route 146
Suite 210
Clifton Park
New York 12065
Tel 518 250 7300
Fax 518 250 7301
www.arcadis.com

Subject:
Amendment to Agreement for Engineering Services
South Water Street Sewer Separation Project

Water

Date:
February 3, 2017

Dear Mr. Morris:

Contact:
Robert Ostapczuk

Pursuant to your request, Arcadis of New York, Inc. (Arcadis) has prepared an amendment to our Agreement for professional engineering services, dated July 10, 2014, with the City of Newburgh (City).

Phone:
518 250 7300

This amendment incorporates additional engineering services detailed in the attached amendment. This includes but is not limited to the modifications of Bid Documents, Construction Administration, and Inspection/Oversight. In addition to these additional services, Arcadis added the Minority and Women Business Enterprise (MWBE) requirements into the Agreement as required by the New York State Environmental Facilities Corporation (NYS EFC).

Email:
robert.ostapczuk@arcadis.com

Our ref:
04881005.0000

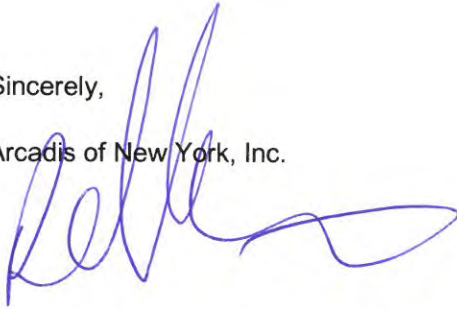
Arcadis proposes to complete the additional services on a not to exceed time and material basis for a total budget of \$144,500. Please see the attached Project Budget for a breakdown of effort by task. It should be noted that Arcadis has estimated that \$65,956, or 46% of the project budget, will be completed by MWBE subcontractors and includes structural design, construction inspection, and plan room services, to meet NYS EFC funding requirements.

Please find enclosed two copies of a partially executed amendment to the agreement. Please have an authorized representative execute both copies on behalf of the City and return one fully executed copy to Arcadis.

Mr. Jason Morris
February 3, 2017

Sincerely,

Arcadis of New York, Inc.



Robert E. Ostapczuk, P.E., BCEE
Associate Vice President

Copies:

D. Loewenstein, Arcadis
J. Dechen, Arcadis

Enclosures:

Project Budget

Partially Executed Amendment (2)

PROJECT BUDGET

City of Newburgh
Newburgh, New York
South Water St. Improvements Project

DESCRIPTION	12	11	8	7	6	5	CADD	Hours Per Task	Labor Cost per Task
Task A.7 - Revise Contract Documents	0	8	40	0	0	32	0	80	\$10,106
Task A.8 - Construction Adminstration	2	24	80	0	0	100	40	246	\$27,440
Task A.9 - Progress Meetings	2	16	70	0	0	24	0	112	\$15,888
Task A.10 - Construction Inspection	0	0	24	0	0	80	0	104	\$10,676
Task A.11 - Contractor's Completion Documents	4	4	16	0	0	40	80	144	\$11,034
TOTAL LABOR HOURS	8	52	230	0	0	276	120	686	
TOTAL DIRECT LABOR COSTS	\$2,976.00	\$11,284.00	\$31,015.50	\$0.00	\$0.00	\$25,668.00	\$4,200.00	\$75,143.50	

Subtotal Direct Labor	\$75,143.50
Plan Room	\$3,300.00
Construction Inspection	\$62,656.00
Misc Expenses:	\$3,400.50
TOTAL	\$144,500.00

AMENDMENT No. 1

An **Agreement** was executed on July 10, 2014 between City of Newburgh [**Client**], having its principal place of business at 83 Broadway, Newburgh, New York 12550, and Arcadis of New York, Inc. [**Arcadis**], having its principal place of business at 630 Plaza Drive, Highlands Ranch, Colorado 80129 and having an office at 855 Route 146 Suite 210, Clifton Park, New York 12065.

Under the Agreement, Arcadis provides certain professional engineering services related to the bidding and construction of the South Water Street Sewer Separation Project [**Assignment**]. The location of the Project is between South Williams Street and Washington Street, along South Water Street within the City of Newburgh [**Site**], New York [**State**].

Client and Arcadis now desire to amend the Agreement to include the amended Services as described below.

In consideration of the mutual promises in the Agreement, Client and Arcadis agree to amend the Agreement as the following:

1. Scope of Amended Services.

- A.7 **Revise Bid Documents:** ARCADIS will modify the Project Manual and Drawings prepared under the original agreement to be compliant with NYS EFC requirements as required for funding. This revision work will include a submission to NYS EFC and NYS DEC and one round of comments with responses to NYS EFC and NYS DEC.
- A.8 **Construction Administration:** ARCADIS will consult with and advise Client and act as Client's representative throughout the construction of the sewer separation on South Water St. All of Client's instructions to Contractor will be issued through ARCADIS who will have authority to act on behalf of Client.
- A.8.1 ARCADIS will prepare agreements for the Contract for the Client's execution with the Contractor. ARCADIS will issue Notices to Proceed to the Contractor in accordance with the Contract Documents. Schedule and conduct a pre-construction conference with the Contractor, representatives of the Client, and any regulatory and/or funding agency representatives as required. Prepare and distribute meeting minutes.
- A.8.2 ARCADIS will issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare Change Orders for execution by Client, if appropriate. ARCADIS will review and approve (or take other appropriate action) Shop Drawings, samples, and other data which the Contractor is required to submit. Such reviews shall be for conformance with the design concept of the Project as a functioning whole and compliance with the information given in the Contract Documents. Any approvals or other actions associated with the reviews shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ARCADIS limits reviews of shop drawings to two reviews for all shop drawings in total. ARCADIS will evaluate and determine the acceptability of substitute or 'equivalent' materials and equipment proposed by Contractor.
- A.8.3 Based on on-site observations and on review of applications for payment and the accompanying data and schedules, ARCADIS will:
- Recommend in writing payments to Contractor. Such recommendations of payment will constitute a representation to Client that the Work has progressed to the point indicated and that, to the best of ARCADIS' knowledge, information and belief, the quality of the Work is generally in accordance with the Contract Documents subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendations.

AMENDMENT No. 1

- In the case of unit price Work, include final determinations of quantities and classifications of the Work in the recommendations of payment, subject to any subsequent adjustments allowed by the Contract Documents.
- A.8.4 ARCADIS shall not be responsible for the acts or omissions of the Contractor, or of any subcontractor or supplier, or any of the Contractor's or subcontractor's or supplier's agents or employees or any other persons (except ARCADIS' own employees and agents) at the site or otherwise furnishing or performing any of the Work. However, nothing contained herein shall be construed to release ARCADIS from liability for failure to properly perform the duties and responsibilities assumed by ARCADIS in the Contract Documents.
- A.8.5 ARCADIS will prepare information for quarterly MWBE compliance reports for NYS EFC for the City of Newburgh's MWBE compliance officer to submit to the NYS EFC.
- A.9 **Progress Meetings:** ARCADIS will schedule and attend biweekly progress meetings at the site to facilitate coordination between Contractors, update construction schedules, discuss progress of the work, requests for information, and any proposed field or change orders. ARCADIS will make a total of eight site visits and progress meetings to be completed on the same day.
- A.9.1 Conduct an inspection to determine if the work is substantially complete, for each milestone, and a final inspection to determine if the completed Work is acceptable so that ARCADIS may recommend, in writing, final payment to Contractor. Prepare and distribute a punch list prior to the final inspection.
- A.10 **Construction Inspection:** ARCADIS will perform full time inspection services on behalf of the Client. The construction inspector will be our agent or employee and under our supervision. The purpose of representation by the Construction Inspector at the site will be to provide for Client a greater degree of confidence that the completed Work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor.
- B.10.1 ARCADIS shall not, during such visits or as a result of observations or inspections of the Work in progress, supervise, direct or have control over the Work nor shall ARCADIS have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor furnishing and performing the Work. ARCADIS can neither guarantee the performance of the Work by the Contractor nor assume responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. Fulltime inspection services will be provided for a period of 16 weeks. Construction will occur in the 2017 calendar year.
- B.10.2 During its visits, ARCADIS may disapprove of or reject the Work while it is in progress if ARCADIS believes that the Work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.
- A.11 **Contractor's Completion Documents:** ARCADIS will receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests, approvals, and record documents, which are to be assembled by Contractor in accordance with the Contract Documents. Such review is limited to determining that their content complies with the requirements of the Contract Documents. Transmit the documents to Client with written comments and certification of the work in the general accordance of the Contract Documents.

AMENDMENT No. 1

These services are subject to the terms for funding requirements as set forth by the New York State Environmental Facilities Corporation (NYS EFC) as stated herein.

SECTION 1 – REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN- OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

The Equal Employment Opportunities requirements of this section apply to Contracts and Subcontracts greater than \$10,000.

The Minority- and Women- Owned Business Enterprises (“MWBE”) and Disadvantaged Business Enterprises (“DBE”) requirements of this section apply to Contractors and Subcontractors working pursuant to: (1) Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, greater than \$25,000; (2) Contracts that are initially under this threshold but subsequent change orders or contract amendments increase the Contract value to above \$25,000; and, (3) change orders greater than \$25,000.

Disregard this section if it does not apply to this Contract or Subcontract.

I. General Provisions

A. Contractors and Subcontractors are required to comply with the following provisions:

1. New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation or real property and improvements thereon.
2. 40 CFR Part 33 (“Federal DBE Regulations”) for contracts under EPA financial assistance agreements, as those terms are defined therein.
3. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 (“Title VI”) for any program or activity receiving federal financial assistance, as those terms are defined therein.

B. The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor and Subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor and Subcontractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.

C. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.

D. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(F) of this section, or enforcement proceedings as allowed by the Contract.

E. If any terms or provisions herein conflict with Executive Law Article 15-A, the MWBE Regulations, Federal DBE Regulations, or Title VI, such law and regulations shall supersede these requirements.

F. Upon request from the Recipient’s Minority Business Officer (“MBO”) and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time. For purposes of this section, MBO means the duly authorized representative of the SRF Recipient for MWBE and EEO purposes.

AMENDMENT No. 1**II. Equal Employment Opportunities (EEO)**

- A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- B. Contractor represents that it has submitted an EEO policy statement to Recipient prior to the execution of this Contract.
- C. Contractor represents that it's EEO policy statement includes the following language:
 - 1. The contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Contracts relating to SRF projects.
 - 2. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this SRF project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - 3. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- D. The Contractor will include the provisions of Subdivisions II(A), II(C), and II(E) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.
- E. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- F. Required EEO Forms
 - 1. EEO Staffing Plan - To ensure compliance with this section, the Contractor represents that it has submitted prior to execution of this Contract an EEO Staffing Plan to the Recipient's MBO to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
 - 2. EEO Workforce Employment Utilization Report ("Workforce Report")

AMENDMENT No. 1

- a. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report to the Recipient, in such format as shall be required by EFC on a quarterly basis during the term of the Contract.
- b. Separate forms shall be completed by Contractor and any Subcontractor.
- c. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

III. Business Participation Opportunities for MWBEs**A. Contract Goals**

1. For purposes of this Contract, EFC establishes the following goals for New York State certified MWBE participation ("MWBE Combined Goals") based on the current availability of qualified MBEs and WBEs.

Program MWBE Combined Goal*

Program	Goal
CWSRF, DWSRF, & GIGP	20%
<i>NYS Water Grants (also receiving EFC Loan)</i>	
CWSRF	23%
DWSRF	26%
<i>NY Water Grants (grant only)</i>	30%
<i>Engineering Planning Grant</i>	
CFA Round 2012-2014	20%
CFA Round 2015-2016	30%

*May be any combination of MBE and/or WBE participation

2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com>.
3. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

B. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan to the Recipient prior to the execution of this Contract.
2. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.
3. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach,

AMENDMENT No. 1

- the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient's MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE Contractor Compliance Report after the changes occurred. At EFC's discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the revised Utilization Plan.
 5. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

C. Requests for Waiver

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the Recipient documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.
2. If the Recipient, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

D. Monthly MWBE Contractor Compliance Report ("Monthly MWBE Report")

The Contractor agrees to submit a report to the Recipient by the third business day following the end of each month over the term of this Contract documenting the payments made and the progress towards achievement of the MWBE goals of the Contract. The Monthly MWBE Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid within 30 days of receipt of payment from the Recipient. The final Monthly MWBE Report must reflect all Utilization Plan revisions and change orders.

E. Required Federal DBE Forms

1. *EPA Form 6100-3 - DBE Subcontractor Performance Form*
Contractor represents that it has submitted the Form 6100-3 to all of its Subcontractors, all of its Subcontractors have completed the form, and that Contractor submitted such completed forms to Recipient with its bid submission.
2. *EPA Form 6100-4 - DBE Subcontractor Utilization Form*
Contractor represents that it has completed the Form 6100-4 and submitted such completed form to Recipient with its bid submission.
3. *EPA Form 6100-2 - DBE Subcontractor Participation Form*
Contractor represents that it has distributed a Form 6100-2 to its MWBE Subcontractors for completion prior to execution of this Contract.

F. Liquidated Damages - MWBE Participation –

AMENDMENT No. 1

In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by the Recipient or EFC that the Contractor has willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages, as specified herein and as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the approved MWBE participation goals; and,
2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

The Recipient and EFC reserve the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Contractor's non-compliance.

In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women's Business Development ("ESD") pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

SECTION 2 – REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

The requirements of this section apply to all Contracts and Subcontracts.

Contractor and any Subcontractors shall comply with, Subpart C of 2 CFR Part 180 as implemented and supplemented by 2 CFR Part 1532. The Contractor is not a debarred or suspended party under 2 CFR Part 180 or 2 CFR Part 1532, or 29 CFR § 5.12. Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.

SECTION 3 – RESTRICTIONS ON LOBBYING

The requirements of this section apply to all Contracts and Subcontracts greater than \$100,000. Disregard this section if it does not apply to this Contract or Subcontract.

The Contractor and any Subcontractor executing a Contract or Subcontract in excess of \$100,000 agree to provide to the Recipient an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 10, consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

2. Schedule of Amended Services.

Bid Documents for the project will be completed by March 31, 2017.

Bidding to be conducted between July – August 2017.

Construction to commence September 2017 with a notice to proceed issued to the selected.

AMENDMENT No. 1

This estimated schedule is assuming the Client secures the funding in time for bidding and there are no delays in the approval process by NYS DEC, NYS DOT, NYS EFC, and CSX Railroad.

3. **Compensation for Amended Services.**

The estimated additional costs of the Amended Services is \$144,500.

Other Provisions. Except as amended herein, all other provisions, terms and conditions in the Agreement shall remain in full force and effect.

Execution Authority. This Amendment to the Agreement is a valid and authorized undertaking of Client and Arcadis. The representatives of Client and Arcadis who have signed below have been authorized to do so.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment to the Agreement as of this date:

_____, 20____.

City of Newburgh

By _____

Title _____

Arcadis of New York, Inc.

By  _____

Title Vice President

RESOLUTION NO.: 45 - 2017

OF

FEBRUARY 27, 2017

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
AMENDMENT NO. 1 TO THE AGREEMENT FOR PROFESSIONAL ENGINEERING
SERVICES WITH ARCADIS OF NEW YORK INC.
FOR THE REGULATOR NO. 2 IMPROVEMENTS PROJECT
AS PART OF THE COMBINED SEWER OVERFLOW LONG TERM CONTROL
PLAN
IN AN AMOUNT NOT TO EXCEED \$157,500.00**

WHEREAS, by Resolution No. 219-2011 of October 24, 2011, the City Council of the City of Newburgh, New York authorized the City Manager to execute an Order on Consent with the New York State Department of Environmental Conservation ("NYS DEC") to resolve violations at the Wastewater Treatment Plant and for the development of the CSO Long Term Control Plan ("LTCP"); and

WHEREAS, the City has submitted its Phase I LTCP, the requirements for which will be deemed satisfied upon the approval of the NYS DEC and by Resolution No. 303-2015 of November 23, 2015, the City Council of the City of Newburgh authorized the City Manager to execute a Modification Order on Consent approving a Schedule of Compliance for Phase I through V of the LTCP; and

WHEREAS, the Regulator No. 2 Improvements Project is included in the Modification Order Schedule of Compliance for Phase I of the LTCP with a planning phase completion date of September 2, 2016; and

WHEREAS, by Resolution No. 115-2016 of May 9, 2016, the City Council authorized the City Manager to execute an agreement with Arcadis of New York, Inc. for professional services to complete the planning phase of the Regulator No. 2 Improvements Project as part of the Phase I Long Term Control Plan for the City's Combined Sewer Collection System, with other provisions as Corporation Counsel may require, in an amount not to exceed \$72,000.00; and

WHEREAS, Arcadis of New York, Inc. has submitted a letter proposal for Amendment No. 1 to its contract for additional professional engineering services to complete the construction phase of the Regulator No. 2 Improvements Project as required by the Schedule of Compliance of the LTCP; and

WHEREAS, the scope of services will include preparation of bid documents, permitting and regulatory approval, bidding assistance, construction administration and inspection and oversight; and

WHEREAS, the cost of said services to be performed is an amount not to exceed \$157,5000.00 and funding for such project shall be derived from HG1.8130.0205.8117.2016--

2016 BAN - LTCP-Regulator #2 Upgrades and HG.8130.0205.8117.2017-EFC CSO LTCP - Regulator #2 Upgrades; and

WHEREAS, this Council determines that accepting the proposal and executing Amendment No. 1 to the contract with Arcadis of New York, Inc. in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept the letter proposal and execute Amendment No. 1 to the Agreement with Arcadis of New York, Inc. for professional services to complete the construction phase of the Regulator No. 2 Improvements Project as part of the Long Term Control Plan for the City's Combined Sewer Collection System, with other provisions as Corporation Counsel may require, in an amount not to exceed \$157,500.00.

Mr. Jason Morris, P.E.
City Engineer
City of Newburgh
83 Broadway
Newburgh, New York 12550

Arcadis of New York, Inc.
855 Route 146
Suite 210
Clifton Park
New York 12065
Tel 518 250 7300
Fax
www.arcadis.com

Subject:
Amendment to Agreement for Engineering Services
CSO LTCP Phase I
Regulator No. 2 Improvements

Water

Date:
February 3, 2017

Dear Mr. Morris:

Contact:
Robert Ostapczuk

Pursuant to your request, Arcadis of New York, Inc. (Arcadis) has prepared an amendment to our Agreement for professional engineering services, dated June 1, 2016, with the City of Newburgh (City).

Phone:
(518) 250-7300

This amendment incorporates additional engineering services detailed in Schedule B and D of the Agreement. This includes but is not limited to the preparation of Bid Documents, Permitting and Regulatory Approval, Bidding Assistance, and Construction Administration and Inspection/Oversight. In addition to these additional services, Arcadis added the Minority and Women Business Enterprise (MWBE) requirements into the Agreement as required by the New York State Environmental Facilities Corporation (NYS EFC).

Email:
robert.ostapczuk
@arcadis.com

Our ref:
04881009.0000

The original Agreement amount was \$72,000, based on time and materials. To date, services provided for the development of the Basis of Design Report are estimated to be \$45,000, assuming one round of comments and response from the New York State Department of Environmental Conservation (NYS DEC). Arcadis has estimated the budget for the additional services to be \$157,500 (please refer to the attached Project Budget for a breakdown of effort by task). Arcadis requests an authorization of an additional \$130,500 to complete the services contained herein. It should be noted that Arcadis has estimated that \$35,600, or 27% of the amended budget, will be provided by MWBE subcontractors and includes structural design, construction inspection, as well as plan room services in order to meet NYS EFC funding requirements. Please note all services will be in accordance with the current rate structure, however, we request an hourly rate for CAD services of \$35.00 per hour.

Mr. Jason Morris
February 3, 2017

Please find enclosed two copies of a partially executed amendment to the agreement. Please have an authorized representative execute both copies on behalf of the City and return one fully executed copy to Arcadis.

Sincerely,

Arcadis of New York, Inc.



Robert E. Ostapczuk, P.E., BCEE
Associate Vice President

Copies:

D. Loewenstein, Arcadis

A. Brooks, Arcadis

Enclosures:

Project Budget

Partially Executed Amendment (2)

PROJECT BUDGET

City of Newburgh
Newburgh, New York
Regulator No. 2 Improvements Project

DESCRIPTION	12	11	9	8	7	5	CADD	Hours Per Task	Labor Cost per Task
Phase II									
Task 1 - Prepare Bid Documents	4	24	0	24	60	120	120	352	\$30,600
Task 2 - Regulatory Approval and Permitting	0	4	0	0	24	40	24	92	\$7,772
Task 3 - Bidding Assistance	0	8	0	0	24	40	32	104	\$8,907
Task 4 - Construction Adminstration	4	24	0	0	120	80	40	268	\$27,862
Task 5 - Progress Meetings and Periodic Site Visits	4	24	0	0	120	80	0	228	\$26,462
Task 6 - Construction Inspection	0	0	80	0	0	0	0	80	\$12,896
Task 11 - Contractor's Completion Documents	0	2	0	0	8	24	40	74	\$4,779
TOTAL LABOR HOURS	12	86	80	24	356	384	256	1198	
TOTAL DIRECT LABOR COSTS	\$4,092.00	\$18,395.40	\$12,896.00	\$2,976.00	\$38,626.00	\$33,331.20	\$8,960.00	\$119,276.60	

Subtotal Labor	\$119,276.60
Structural Engineering	\$17,600.00
Plan Room	\$3,000.00
Construction Inspection	\$15,000.00
Misc Expenses:	\$2,623.40
TOTAL	\$157,500.00
MWBE	27%

AMENDMENT No. 1

An **Agreement** was executed on June 1, 2016 between City of Newburgh [**Client**], having its principal place of business at 83 Broadway, Newburgh, New York 12550, and Arcadis of New York, Inc. [**Arcadis**], having its principal place of business at 630 Plaza Drive, Highlands Ranch, Colorado 80129 and having an office at 855 Route 146 Suite 210, Clifton Park, New York 12065.

Under the Agreement, Arcadis provides certain professional engineering services related to improvements to Regulator No. 2 [**Assignment**] along the Quassaick Creek in the City of Newburgh[**Site**], New York[**State**].

Client and Arcadis now desire to amend the Agreement to include the amended Services as described below.

In consideration of the mutual promises in the Agreement, Client and Arcadis agree to amend the Agreement as the following:

1. Scope of Amended Services.

Arcadis will provide additional engineering services as detailed in Schedules B and D of the Agreement. These services are subject to the terms for funding requirements as set forth by the New York State Environmental Facilities Corporation (NYS EFC) as stated herein.

SECTION 1 – REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN- OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

The Equal Employment Opportunities requirements of this section apply to Contracts and Subcontracts greater than \$10,000.

The Minority- and Women- Owned Business Enterprises (“MWBE”) and Disadvantaged Business Enterprises (“DBE”) requirements of this section apply to Contractors and Subcontractors working pursuant to: (1) Contracts for labor, services (including, but not limited to, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, greater than \$25,000; (2) Contracts that are initially under this threshold but subsequent change orders or contract amendments increase the Contract value to above \$25,000; and, (3) change orders greater than \$25,000.

Disregard this section if it does not apply to this Contract or Subcontract.

I. General Provisions

A. Contractors and Subcontractors are required to comply with the following provisions:

1. New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services (including, but not limited to, legal, legal, financial, and other professional services), supplies, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation or real property and improvements thereon.
2. 40 CFR Part 33 (“Federal DBE Regulations”) for contracts under EPA financial assistance agreements, as those terms are defined therein.
3. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 (“Title VI”) for any program or activity receiving federal financial assistance, as those terms are defined therein.

B. The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor and Subcontractor shall carry out applicable requirements of 40 CFR

AMENDMENT No. 1

Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor and Subcontractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.

- C. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.
 - D. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to subsection III(F) of this section, or enforcement proceedings as allowed by the Contract.
 - E. If any terms or provisions herein conflict with Executive Law Article 15-A, the MWBE Regulations, Federal DBE Regulations, or Title VI, such law and regulations shall supersede these requirements.
 - F. Upon request from the Recipient's Minority Business Officer ("MBO") and/or EFC, Contractor will provide complete responses to inquiries and all MWBE and EEO records available within a reasonable time. For purposes of this section, MBO means the duly authorized representative of the SRF Recipient for MWBE and EEO purposes.
- II. Equal Employment Opportunities (EEO)
- A. Each Contractor and Subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - B. Contractor represents that it has submitted an EEO policy statement to Recipient prior to the execution of this Contract.
 - C. Contractor represents that it's EEO policy statement includes the following language:
 - 1. The contractor will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Contracts relating to SRF projects.
 - 2. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract relating to this SRF project, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - 3. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

AMENDMENT No. 1

- D. The Contractor will include the provisions of Subdivisions II(A), II(C), and II(E) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.
- E. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- F. Required EEO Forms
1. EEO Staffing Plan - To ensure compliance with this section, the Contractor represents that it has submitted prior to execution of this Contract an EEO Staffing Plan to the Recipient's MBO to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
 2. EEO Workforce Employment Utilization Report ("Workforce Report")
 - a. The Contractor shall submit a Workforce Report, and shall require each of its Subcontractors to submit a Workforce Report to the Recipient, in such format as shall be required by EFC on a quarterly basis during the term of the Contract.
 - b. Separate forms shall be completed by Contractor and any Subcontractor.
 - c. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

III. Business Participation Opportunities for MWBEs**A. Contract Goals**

1. For purposes of this Contract, EFC establishes the following goals for New York State certified MWBE participation ("MWBE Combined Goals") based on the current availability of qualified MBEs and WBEs.

Program MWBE Combined Goal*

Program	Goal
CWSRF, DWSRF, & GIGP	20%
<i>NYS Water Grants (also receiving EFC Loan)</i>	
CWSRF	23%
DWSRF	26%
<i>NY Water Grants (grant only)</i>	30%
<i>Engineering Planning Grant</i>	
CFA Round 2012-2014	20%
CFA Round 2015-2016	30%

*May be any combination of MBE and/or WBE participation

AMENDMENT No. 1

2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section III-A hereof, the Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com>.
3. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the Recipient for liquidated or other appropriate damages, as set forth herein.

B. MWBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan to the Recipient prior to the execution of this Contract.
2. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this section.
3. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient’s MBO. Contractor shall indicate the changes to the MBO in the next Monthly MWBE Contractor Compliance Report after the changes occurred. At EFC’s discretion, an updated MWBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the MBO with the revised Utilization Plan.
5. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the MWBE Utilization Plan to the MBO within 30 days of their execution.

C. Requests for Waiver

1. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver to the Recipient documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Recipient shall forward the request to EFC for evaluation, and EFC will issue a written notice of acceptance or denial within twenty (20) days of receipt.
2. If the Recipient, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

D. Monthly MWBE Contractor Compliance Report (“Monthly MWBE Report”)

The Contractor agrees to submit a report to the Recipient by the third business day following the end of each month over the term of this Contract documenting the payments made and the progress towards achievement of the MWBE goals of the Contract. The Monthly MWBE Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid

AMENDMENT No. 1

within 30 days of receipt of payment from the Recipient. The final Monthly MWBE Report must reflect all Utilization Plan revisions and change orders.

E. Required Federal DBE Forms

1. *EPA Form 6100-3 - DBE Subcontractor Performance Form*

Contractor represents that it has submitted the Form 6100-3 to all of its Subcontractors, all of its Subcontractors have completed the form, and that Contractor submitted such completed forms to Recipient with its bid submission.

2. *EPA Form 6100-4 - DBE Subcontractor Utilization Form*

Contractor represents that it has completed the Form 6100-4 and submitted such completed form to Recipient with its bid submission.

3. *EPA Form 6100-2 - DBE Subcontractor Participation Form*

Contractor represents that it has distributed a Form 6100-2 to its MWBE Subcontractors for completion prior to execution of this Contract.

F. Liquidated Damages - MWBE Participation –

In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, if it has been determined by the Recipient or EFC that the Contractor has willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages, as specified herein and as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the approved MWBE participation goals; and,
2. All sums actually paid to MWBEs for work performed or materials supplied under this Contract.

The Recipient and EFC reserve the right to impose a lesser amount of liquidated damages than the amount calculated above based on the circumstances surrounding the Contractor's non-compliance.

In the event a determination has been made by the Recipient or EFC which requires the payment of damages identified herein and such identified sums have not been withheld, Contractor shall pay such damages to the Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Empire State Development Corporation – Division of Minority and Women's Business Development ("ESD") pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the damages shall be payable if the Director of ESD renders a decision in favor of the Recipient.

SECTION 2 – REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

The requirements of this section apply to all Contracts and Subcontracts.

Contractor and any Subcontractors shall comply with, Subpart C of 2 CFR Part 180 as implemented and supplemented by 2 CFR Part 1532. The Contractor is not a debarred or suspended party under 2 CFR Part 180 or 2 CFR Part 1532, or 29 CFR § 5.12. Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor

AMENDMENT No. 1

any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.

SECTION 3 – RESTRICTIONS ON LOBBYING

The requirements of this section apply to all Contracts and Subcontracts greater than \$100,000. Disregard this section if it does not apply to this Contract or Subcontract.

The Contractor and any Subcontractor executing a Contract or Subcontract in excess of \$100,000 agree to provide to the Recipient an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 10, consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

2. Schedule of Amended Services.

Project manual and drawings will be submitted to the NYS Dec prior to May 30, 2017

3. Compensation for Amended Services.

The estimated additional costs of the Amended Services is \$130,500. CAD services will be compensated on an hourly rate of \$35.00 per hour.

Other Provisions. Except as amended herein, all other provisions, terms and conditions in the Agreement shall remain in full force and effect.

Execution Authority. This Amendment to the Agreement is a valid and authorized undertaking of Client and Arcadis. The representatives of Client and Arcadis who have signed below have been authorized to do so.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment to the Agreement as of this date:

_____, 20____.

City of Newburgh

By _____

Title _____

Arcadis of New York, Inc.

By  _____

Title Vice President