



City of Newburgh Council Work Session  
*Sesion de trabajo del Concejal de la  
Ciudad de Newburgh*

April 5, 2017  
6:00 PM

Engineering/Ingeniería

1. SEQRA - First Street Streetscape Improvements Project  
Resolution of the City Council of the City of Newburgh assuming lead agency status under State Environmental Quality Review Act for the First Street Streetscape Improvements Project, declaring the Project to be an unlisted action, adopting part 1 and part 2 of an Environmental Assessment Form and issuing a negative declaration. (Jason Morris)
2. Award of Bid First Street Streetscape Improvements  
Resolution authorizing the award of a bid and execution of a contract with Consorti Bros. Paving & Sealcoating, Inc. in the amount of \$189,779.03 for construction of the First Street Streetscape Improvements Project. (Jason Morris)
3. Proposal for Land Surveying Services - Washington Lake Dam Grade Modifications  
Resolution authorizing the City Manager to accept a proposal and execute an agreement with Kenneth B. Salzmann, LS for surveying services adjacent to the Washington Lake Dam in the amount of \$7,300.00. (Jason Morris)

Planning and Economic Development/Planificación y Desarrollo Económico

4. Resolution Authorizing the Extension of Time to Close Title on the Properties Located at 64 Johnston Street & 39 Lutheran Street  
Resolution Authorizing the extension of time to close title on the properties located at 64 Johnston Street (Section 23, Block 7, Lot 20) and 39 Lutheran Street (Section 29, Block 3, Lot 13) sold at private sale to Bentley Meeker. (Michelle Kelson)
5. Agreement with Mountain Valley Guides for Summer Kayaking Tours from the City Boat Launch  
Resolution authorizing the City Manager to execute a license agreement with Mountain Valley Guides LLC for access to and use of the Washington Street Boat Launch and Unico Park to provide kayak rentals and tours. (Deirdre Glenn)
6. Purchase of 56 Benkard Avenue  
Resolution to authorize the conveyance of real property known as 56 Benkard Avenue (Section 45, Block 3, Lot 18) at private sale to Justin Torres and Miguel A. Torres, Jr. for the amount of \$9,000.00. (Deirdre Glenn)

7. Purchase of 31 Benkard Avenue

Resolution to authorize the conveyance of real property known as 31 Benkard Avenue (Section 45, Block 5, Lot 1) at private sale to Abraham Braver for the amount of \$15,150.00. (Deirdre Glenn)

8. Purchase of 189 N. Miller Street

Resolution to authorize the conveyance of real property known as 189 North Miller Street (Section 11, Block 1, Lot 17) at private sale to Pinchas Korn for the amount of \$4,920.00. (Deirdre Glenn)

9. Transfer of Real Property to Newburgh Community Land Bank

Resolution authorizing the transfer of real property to the Newburgh Community Landbank. (Deirdre Glenn & Madeline Fletcher)

Grants/Contracts/Agreements / Becas /Contratos/Convenios

10. FY 2017 Violent Gang and Gun Crime Reduction Program (Project Safe Neighborhoods)

Resolution authorizing the City Manager to apply for and accept if awarded a United States Department of Justice Violent Gang and Gun Crime Reduction Program Grant (Project Safe Neighborhoods) in the amount of \$397,345.00. (Lt. Rich Carrion)  
WITH NO CITY MATCH REQUIRED

Old Business Discussion/ Discusion de Negocios Viejos

11. 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)*

12. 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)*

13. 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 Regulator 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)*

Local Laws/Leys Locales

14. Local Law Allowing Reciprocal Licensing Agreements for Electricians in Other Jurisdictions

Resolution scheduling a public hearing for April 24, 2017 to hear public comment concerning a Local Law amending Chapter 155 of the Code of Ordinances of the City of Newburgh to add a new section entitled "Reciprocal Licensing". (Michelle Kelson)

15. Local Law Prohibiting the Possession or Sale of Sparklers/Sparkling Devices

A Resolution Scheduling a Public Hearing for April 24, 2017 to Hear Public Comment Concerning a Local Law Amending Chapter 172 of the Code of Ordinances of the City of Newburgh to Add "Article II - Fireworks and Sparkling Devices". (Michelle Kelson)

Discussion Items/Temas de Discusión

16. City Council Rules & Order of Procedure

A proposal to change the Council rules and order of procedure to have all public comment at the beginning of the Council meetings. (Councilwoman Cindy Holmes)

17. Conservation Advisory Council Appointments

City Council

18. Cyber/Electronic and Telephonic Communication Policy Update

(Katie Mack & Michelle Kelson)

19. IDA Appointments

(City Council)

Executive Session/ Sesión Ejecutiva

20. Pending litigation

21. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation

**RESOLUTION NO.: \_\_\_\_\_ - 2017**

**OF**

**APRIL 6, 2017**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH  
ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL  
QUALITY REVIEW ACT FOR THE FIRST STREET IMPROVEMENTS PROJECT,  
DECLARING THE PROJECT TO BE AN UNLISTED ACTION,  
ADOPTING PART 1 AND PART 2 OF AN ENVIRONMENTAL ASSESSMENT FORM  
AND ISSUING A NEGATIVE DECLARATION**

**WHEREAS**, the City of Newburgh proposes undertake improvements along First Street in the area of the First Street Fishing Pier designated as the First Street Improvements Project (the “Project”); and

**WHEREAS**, in compliance with the State Environmental Quality Review Act (SEQRA), the City Council of the City of Newburgh wishes to assume Lead Agency status, declare the Project to be an unlisted action, approve and adopt Part 1 and Part 2 of the Short Environmental Assessment Form and find that the Project will not have any significant adverse environmental impacts; and issue a negative declaration;

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

1. That the City Council of the City of Newburgh hereby declares itself as the Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6; and
2. Classifies the action as unlisted action; and
3. Adopts Part 1 and Part 2 of the Short Environmental Assessment Form; and
4. Issues a Negative Declaration with respect to the Project; and

**BE IT FURTHER RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to sign and file any/and all other documents that may be necessary in connection with this SEQRA classification of the Project listed in this resolution.

# ***Short Environmental Assessment Form***

## ***Part 1 - Project Information***

### **Instructions for Completing**

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>				
Name of Action or Project:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:			Telephone:	
			E-Mail:	
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			<b>NO</b>	<b>YES</b>
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.				
2. Does the proposed action require a permit, approval or funding from any other governmental Agency?			<b>NO</b>	<b>YES</b>
If Yes, list agency(s) name and permit or approval:				
3.a. Total acreage of the site of the proposed action? _____ acres				
b. Total acreage to be physically disturbed? _____ acres				
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, adjoining and near the proposed action.				
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)				
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____				
<input type="checkbox"/> Parkland				

5. Is the proposed action, a. A permitted use under the zoning regulations?  b. Consistent with the adopted comprehensive plan?	<b>NO</b>	<b>YES</b>	<b>N/A</b>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	<b>NO</b>	<b>YES</b>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ _____	<b>NO</b>	<b>YES</b>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?  b. Are public transportation service(s) available at or near the site of the proposed action?  c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<b>NO</b>	<b>YES</b>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	<b>NO</b>	<b>YES</b>	
10. Will the proposed action connect to an existing public/private water supply?  If No, describe method for providing potable water: _____ _____	<b>NO</b>	<b>YES</b>	
11. Will the proposed action connect to existing wastewater utilities?  If No, describe method for providing wastewater treatment: _____ _____	<b>NO</b>	<b>YES</b>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?  b. Is the proposed action located in an archeological sensitive area?	<b>NO</b>	<b>YES</b>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?  b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	<b>NO</b>	<b>YES</b>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	<b>NO</b>	<b>YES</b>	
16. Is the project site located in the 100 year flood plain?	<b>NO</b>	<b>YES</b>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES  b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES _____ _____	<b>NO</b>	<b>YES</b>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	<b>NO</b>   	<b>YES</b>   
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	<b>NO</b>   	<b>YES</b>   
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	<b>NO</b>   	<b>YES</b>   
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b> Applicant/sponsor name: _____ Date: _____ Signature: _____		





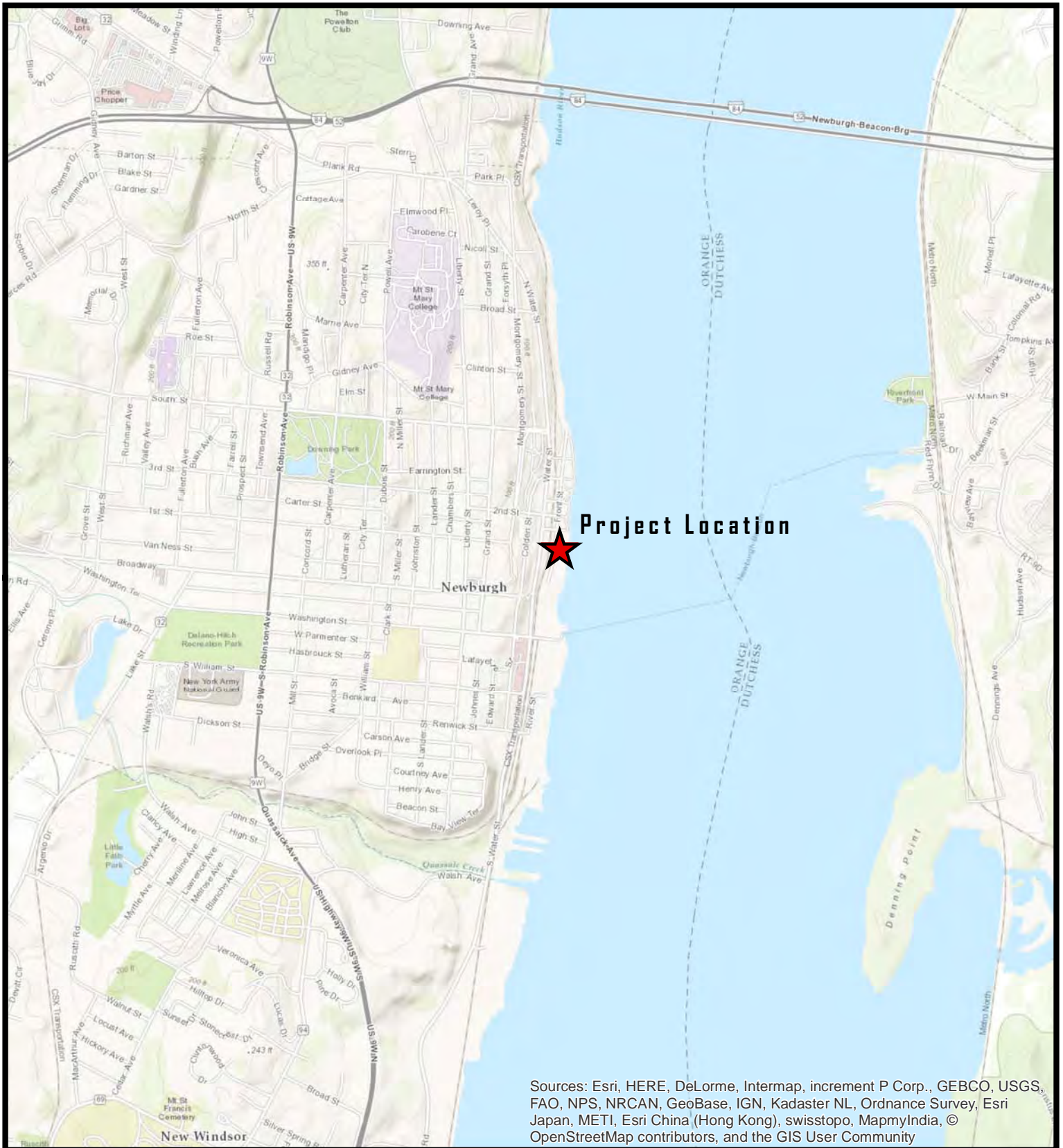
**Disclaimer:** The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National Register of Historic Places]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	Yes
Part 1 / Question 16 [100 Year Flood Plain]	Yes
Part 1 / Question 20 [Remediation Site]	Yes

# First Street Streetscape Improvements Location Map

C.M.W. / Wednesday, February 01, 2017



## FOR VISUAL REFERENCE ONLY

DISCLAIMER: City of Newburgh makes no representations and provides no warranties, expressed or implied, concerning the accuracy, completeness, or suitability of this map for any particular purpose, and/or for title infringement and assumes no liability for the use or misuse of such data.

0 375/50 1,500 2,250 3,000



1 inch = 2,000 feet







Project:



Date:

## ***Short Environmental Assessment Form***

### ***Part 2 - Impact Assessment***

**Part 2 is to be completed by the Lead Agency.**

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing: a. public / private water supplies?		
b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? 		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)? 		
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

Project:

Date:

## ***Short Environmental Assessment Form***

### ***Part 3 Determination of Significance***

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

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Name of Lead Agency

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Date

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Print or Type Name of Responsible Officer in Lead Agency

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Title of Responsible Officer

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Signature of Responsible Officer in Lead Agency

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Signature of Preparer (if different from Responsible Officer)

NEW YORK STATE DEPARTMENT OF STATE  
COASTAL MANAGEMENT PROGRAM

Federal Consistency Assessment Form

An applicant, seeking a permit, license, waiver, certification or similar type of approval from a federal agency which is subject to the New York State Coastal Management Program (CMP), shall complete this assessment form for any proposed activity that will occur within and/or directly affect the State's Coastal Area. This form is intended to assist an applicant in certifying that the proposed activity is consistent with New York State's CMP as required by U.S. Department of Commerce regulations (15 CFR 930.57). It should be completed at the time when the federal application is prepared. The Department of State will use the completed form and accompanying information in its review of the applicant's certification of consistency.

A. **APPLICANT** (please print)

1. Name: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Telephone: Area Code (     ) \_\_\_\_\_

B. **PROPOSED ACTIVITY:**

1. Brief description of activity:

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2. Purpose of activity:

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3. Location of activity:

_____	_____	_____
County	City, Town, or Village	Street or Site Description

4. Type of federal permit/license required: \_\_\_\_\_

5. Federal application number, if known: \_\_\_\_\_

6. If a state permit/license was issued or is required for the proposed activity, identify the state agency and provide the application or permit number, if known:

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C. **COASTAL ASSESSMENT** Check either "YES" or "NO" for each of these questions. The numbers following each question refer to the policies described in the CMP document (see footnote on page 2) which may be affected by the proposed activity.

- |   |   |
|---|---|
| 1. Will the proposed activity result in any of the following:   | YES/NO  |
| <ul style="list-style-type: none"> <li>a. Large physical change to a site within the coastal area which will require the preparation of an environmental impact statement? (11, 22, 25, 32, 37, 38, 41, 43)</li> <li>b. Physical alteration of more than two acres of land along the shoreline, land under water or coastal waters? (2, 11, 12, 20, 28, 35, 44)</li> <li>c. Revitalization/redevelopment of a deteriorated or underutilized waterfront site? (1)</li> <li>d. Reduction of existing or potential public access to or along coastal waters? (19, 20)</li> <li>e. Adverse effect upon the commercial or recreational use of coastal fish resources? (9,10)</li> <li>f. Siting of a facility essential to the exploration, development and production of energy resources in coastal waters or on the Outer Continental Shelf? (29)</li> <li>g. Siting of a facility essential to the generation or transmission of energy? (27)</li> <li>h. Mining, excavation, or dredging activities, or the placement of dredged or fill material in coastal waters? (15, 35)</li> <li>i. Discharge of toxics, hazardous substances or other pollutants into coastal waters? (8, 15, 35)</li> <li>j. Draining of stormwater runoff or sewer overflows into coastal waters? (33)</li> <li>k. Transport, storage, treatment, or disposal of solid wastes or hazardous materials? (36, 39)</li> <li>l. Adverse effect upon land or water uses within the State's small harbors? (4)</li> </ul> | <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> |
| 2. Will the proposed activity affect or be located in, on, or adjacent to any of the following:   | YES/NO  |
| <ul style="list-style-type: none"> <li>a. State designated freshwater or tidal wetland? (44)</li> <li>b. Federally designated flood and/or state designated erosion hazard area? (11, 12, 17)</li> <li>c. State designated significant fish and/or wildlife habitat? (7)</li> <li>d. State designated significant scenic resource or area? (24)</li> <li>e. State designated important agricultural lands? (26)</li> <li>f. Beach, dune or Barrier Island? (12)</li> <li>g. Major ports of Albany, Buffalo, Ogdensburg, Oswego or New York? (3)</li> <li>h. State, county, or local park? (19, 20)</li> <li>i. Historic resource listed on the National or State Register of Historic Places? (23)</li> </ul>   | <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div>  |
| 3. Will the proposed activity require any of the following:   | YES/NO  |
| <ul style="list-style-type: none"> <li>a. Waterfront site? (2, 21, 22)</li> <li>b. Provision of new public services or infrastructure in undeveloped or sparsely populated sections of the coastal area? (5)</li> <li>c. Construction or reconstruction of a flood or erosion control structure? (13, 14, 16)</li> <li>d. State water quality permit or certification? (30, 38, 40)</li> <li>e. State air quality permit or certification? (41, 43)</li> </ul>  | <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div> <div>— —</div>  |
| 4. Will the proposed activity occur within and/or affect an area covered by a State-approved local waterfront revitalization program, or State-approved regional coastal management program?<br>(see policies in program document*)   | — —   |

#### **D. ADDITIONAL STEPS**

1. If all of the questions in Section C are answered "NO", then the applicant or agency shall complete Section E and submit the documentation required by Section F.

2. If any of the questions in Section C are answered "YES", then the applicant or agent is advised to consult the CMP, or where appropriate, the local waterfront revitalization program document\*. The proposed activity must be analyzed in more detail with respect to the applicable state or local coastal policies. On a separate page(s), the applicant or agent shall: (a) identify, by their policy numbers, which coastal policies are affected by the activity, (b) briefly assess the effects of the activity upon the policy; and, (c) state how the activity is consistent with each policy. Following the completion of this written assessment, the applicant or agency shall complete Section E and submit the documentation required by Section F.

#### **E. CERTIFICATION**

The applicant or agent must certify that the proposed activity is consistent with the State's CMP or the approved local waterfront revitalization program, as appropriate. If this certification cannot be made, the proposed activity shall not be undertaken. If this certification can be made, complete this Section.

"The proposed activity complies with New York State's approved Coastal Management Program, or with the applicable approved local waterfront revitalization program, and will be conducted in a manner consistent with such program."

Applicant/Agent's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: Area Code (     ) \_\_\_\_\_

Applicant/Agent's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

#### **F. SUBMISSION REQUIREMENTS**

1. The applicant or agent shall submit the following documents to the **New York State Department of State, Office of Planning and Development, Attn: Consistency Review Unit, One Commerce Plaza-Suite 1010, 99 Washington Avenue, Albany, New York 12231.**

- a. Copy of original signed form.
- b. Copy of the completed federal agency application.
- c. Other available information which would support the certification of consistency.

2. The applicant or agent shall also submit a copy of this completed form along with his/her application to the federal agency.

3. If there are any questions regarding the submission of this form, contact the Department of State at (518) 474-6000.

\*These state and local documents are available for inspection at the offices of many federal agencies, Department of environmental Conservation and Department of State regional offices, and the appropriate regional and county planning agencies. Local program documents are also available for inspection at the offices of the appropriate local government.



# Conservation Advisory Council | City of Newburgh, New York

123 Grand Street, Newburgh, New York, 12550

Phone: (845) 569-7380 [www.cityofnewburgh-ny.gov/conservation-advisory-council](http://www.cityofnewburgh-ny.gov/conservation-advisory-council)

## Council Members:

Chuck Thomas, Chair

Marcel Barrick

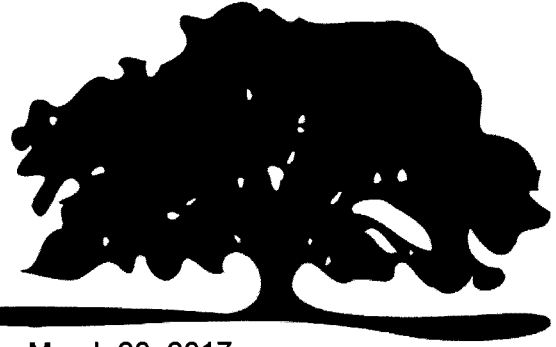
C. Kippy Boyle

Deborah Dresser

Gail Fulton

Karen McCarthy

(vacancy)



March 20, 2017

MEMO TO: Lisa Daily, Chair  
City of Newburgh Planning Board

FROM: Chuck Thomas, Chair  
Conservation Advisory Council ("CAC")

Re: **Proposed Projects within the LWRP requiring Coastal Consistency Forms:**  
**First Street Streetscape**

The above-referenced project is coming before the Planning Board for review. CCF's (Coastal Consistency Forms) for the City of Newburgh First Street Streetscape Improvements, 1 Park Place and 100 Third Street were presented to the CAC at our regularly scheduled meeting of March 2, 2017. We offer the following comments and recommendations to the Planning Board and the applicants. Our comments are also to be included in the official record of any Public Hearings.

**First Street Streetscape (CCF attached)** The project had been reviewed previously by the CAC and was developed in consultation with the CAC. The Coastal Consistency Form was reviewed and the project was found to be Consistent with the Local Waterfront Revitalization Program for the City of Newburgh as outlined in Chapter 159, Article III of the City of Newburgh Code of Ordinances. The actions proposed to be taken are designed to restore and revitalize deteriorated and underutilized waterfront areas and promote a water-dependent recreational use. The CAC reviewed the project with the engineering department with a view of reducing storm water runoff and the potential use of permeable materials to alleviate storm water runoff and it was determined to not be practicable in this instance given the water table and location. The CAC remains committed to reducing storm water runoff into the Hudson River or runoff into the combined storm and sewer system and to recommend the use of permeable materials wherever feasible to reduce runoff.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Chuck Thomas", written over a horizontal line.

Chuck Thomas, Chair

**RESOLUTION NO.: \_\_\_\_\_ - 2017**

**OF**

**APRIL 6, 2017**

**A RESOLUTION AUTHORIZING THE AWARD OF A BID AND EXECUTION OF  
A CONTRACT WITH CONSORTI BROS. PAVING & SEALCOATING, INC.  
IN THE AMOUNT OF \$189,779.03 FOR CONSTRUCTION OF  
THE FIRST STREET STREETScape IMPROVEMENTS PROJECT**

**WHEREAS**, the City of Newburgh issued Bid#14.16 for construction of the First Street Streetscape Improvements Project; and

**WHEREAS**, the project involves the reconstruction of the existing streetscape to provide upgrades and pedestrian friendly improvements along First Street to the fishing pier; and

**WHEREAS**, the City of Newburgh received 9 responses to the bid, and upon review and evaluation of the bids submitted, City staff recommends that a contract for construction services for the Project be awarded to Consorti Bros. Paving & Sealcoating, Inc., as the lowest responsible bidder, in the amount of \$189,779.03, which includes Alt. 1A, 1B, 1C, 1D, 2.1 and 3.1; and

**WHEREAS**, funding for the construction phase of the Project in the amount of \$189,779.03 shall be derived from H1.5112.0208.5102.2010 - Construction & Major Alter. First Street Reconstruction.2010 Year, 50% of which is reimbursable from a New York Department of State Grant; and

**WHEREAS**, this Council has reviewed the proposal and determined that entering into a contract with Consorti Bros. Paving & Sealcoating, Inc. is in the best interests of the City of Newburgh and its further development;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the bid for the construction of the First Street Streetscape Improvements Project, and it is hereby awarded to Consorti Bros. Paving & Sealcoating, Inc.; and

**BE IT FURTHER RESOLVED**, that the City Manager be and he is hereby authorized to execute a contract with Consorti Bros. Paving & Sealcoating, Inc. in the amount of \$189,779.03 for construction in connection with the reconstruction of the existing streetscape to provide upgrades and pedestrian friendly improvements along First Street to the fishing pier.



# City of Newburgh City Comptroller's Office

City Hall – 83 Broadway  
Newburgh, New York 12550

Tel. (845) 569-7322  
Fax (845) 569-7490

Kathryn Mack  
City Comptroller

[kmack@cityofnewburgh-ny.gov](mailto:kmack@cityofnewburgh-ny.gov)

## NOTICE OF AWARD

Consorti Bros. Paving & Sealcoating, Inc.  
208 So. Plank Rd.  
Newburgh, NY 12550

**PROJECT DESCRIPTION:** **First Street Streetscape Improvements**  
Bid #14.16 by Engineering Department

The City of Newburgh has considered the BID submitted by your office on February 3, 2017 for the above-described WORK in response to its Advertisement of Bids dated November 22, 2016.

You are hereby notified that your lump sum bid proposal of \$182,999.03 has been accepted for the above-referenced WORK in accordance with the Bid Specifications and Documents. Furthermore, the City has accepted your bid prices for certain Additional Alternates and has included such prices into the overall contract cost as follows:

Add Alternate 1A: Straight backless bench, each: \$780.00 x 6	\$ 4,680.00
Add Alternate 1B: Bike rack, each: \$650.00 x 1	650.00
Add Alternate 1C: Trash receptacle, each: \$750.00 x 1	750.00
Add Alternate 1D: Flag pole, each: \$700.00 x 1	<u>700.00</u>
Sub-Total Add Alternates 1A-1D:	<u>\$ 6,780.00</u>

Therefore, the total contract cost for the above-referenced WORK shall be \$189,779.03, inclusive of the aforesaid Additional Alternates made in accordance with the Bid Specifications and Documents. You are required to acknowledge this NOTICE OF AWARD and return an original to this office.

You are hereby required by the Instructions to Bidders to execute the enclosed two (2) Agreements and furnish the required Bonds and Insurance Certificates within fifteen (15) calendar days from the date of this notice to you. If you fail to execute said Agreements within fifteen (15) days of this notice, the City of Newburgh will be entitled to consider all of your rights arising out of the Owner's acceptance of your bid as abandoned. The Owner will be entitled to such other rights as may be granted by law.

Return the acknowledged original and two (2) original Agreements to: City Hall, Attn: Comptroller's Office, 83 Broadway, Newburgh, New York 12550. An original agreement will be mailed to your office once executed by the City.

Dated: April 7, 2017

\_\_\_\_\_  
Kathryn Mack, City Comptroller

ACCEPTANCE OF NOTICE: Receipt of the above  
NOTICE OF AWARD is hereby acknowledged by

Consorti Bros. Paving & Sealcoating, Inc.

This \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

By \_\_\_\_\_  
Signature in **Blue** Ink

Title \_\_\_\_\_

**RESOLUTION NO.: \_\_\_\_\_ - 2017**

**OF**

**APRIL 6, 2017**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH  
KENNETH B. SALZMANN, LS FOR SURVEYING SERVICES  
ADJACENT TO THE WASHINGTON LAKE DAM IN THE AMOUNT OF \$7,300.00**

**WHEREAS**, the New York State Department of Environmental Conservation Dam Safety Division is requiring the City of Newburgh to infill an existing low/wet area along Old Little Britain Road adjacent to the Washington Lake Dam; and

**WHEREAS**, the infill requirement will involve the preparation of an existing conditions survey, proposed grading stakeout and post construction improvements mapping; and

**WHEREAS**, the City has obtained a proposal from Kenneth B. Salzmnn, LS, to perform the survey services at a cost of \$7,300.00 with the funding for such services to be derived from 2016 BAN (HF1.8320.0200.8112.2016); and

**WHEREAS**, said work is appropriate and necessary to protect the life, health, safety and welfare of the residents 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 hereby is authorized to accept a proposal and execute an agreement with Kenneth L. Salzmnn, LS, for land surveying services along Old Little Britain Road adjacent to the Washington Lake Dam at a cost of \$7,300.00.

# KENNETH B. SALZMANN, LAND SURVEYOR

---

12 Hunter Lane • P.O. Box 498 • Pawling, NY 12564-0498

Licensed in New York • New Jersey • Connecticut

(845) 855-3885 • fax (845) 855-4101

March 21, 2017

Mr. Jason C. Morris, PE  
City of Newburgh Engineer  
83 Broadway  
Newburgh, NY 12550

**RE:** Washington Lake Grade Modifications  
Old Little Britain Road  
City of Newburgh, New York

## **Proposal for Surveying Services**

Dear Jason:

I am pleased to submit this Proposal for Surveying Services for the above referenced site. I understand the NYSDEC is requiring the City of Newburgh to infill an existing low/wet area on the downslope face of the earthen dam, an action that will require a NYSDEC Dam Safety Permit. You have requested surveying services as part of your permit process. The site is adjacent to the City of Newburgh water supply reservoir dam at Washington Lake, located on the south side of Old Little Britain Road. The surveying services will consist of topographic mapping, staking proposed grades once you have completed the design of the new grades, and locating features after construction is completed. Accordingly, I propose to perform the following:

### **I. SCOPE OF SERVICES:**

#### *A. Topographic Map*

I will prepare a Topographic Map (the map) of the area depicted on the photos you provided, attached. The mapping will extend to and include the paved portion of Old Little Britain Road. The map will indicate the edge of water of Washington Lake, but will not include information below the surface of the lake.

The map will be compiled at a scale of one inch equals twenty feet (1" = 20'). Elevations, referenced to the National Geodetic Vertical Datum of 1988 (NGVD88), will be depicted by one (1) foot contours, supplemented by spot elevations. The NGVD88 Datum will be established at the site by use of survey grade GPS measurements. Two (2) bench marks will be established at the site for future reference. The elevations obtained at Washington Lake in the fall of 2016 were based upon an assumed datum. A conversion factor will be supplied, permitting you to transfer elevations in the assumed datum used in 2016 to NAVD88.

The Topographic Map will depict features such as swales, the top of dam, water surface elevation, wet areas, fences, gates, the edge of wooded areas, shrub masses and planted areas, as applicable. Individual trees and shrubs will be located within open areas. Tree locations will be depicted by symbol, annotated with their estimated

diameter at breast height and common name, if known. However, the map will not depict individual trees or shrubs within the wooded portion of the site.

The Topographic Map will also depict visible utility structures, such as manholes, drain inlets, utility valves, vaults and vents, as applicable. Pipe invert elevations and the size of storm drains will be shown where accessible.

I do not propose to depict the location of underground utilities (except for the above mentioned storm drains) or irrigation systems, if any. If the mapping of underground utilities is required, I would be pleased to provide you with a proposal for these additional services.

The map will depict the property line of the residential lot to the east of the mapping area, as determined by the survey map files you have provided. An assumed right of way line, 25 feet from the centerline of the current paved travelled way, will be depicted for Old Little Britain Road. I do not propose to determine or depict the City of Newburgh corporate boundary.

#### *B. Staking Proposed Grades*

You will determine the new grades to be created at the site, providing the final site plans as Autocad and PDF files. I will set stakes at the site to assist the contractor in the grading operation. A sketch depicting stake locations and elevations will be provided as a PDF file via email.

#### *C. Improvement Location Map*

After the contractor has completed his work I will return to the site to locate features "as constructed." The Topographic Map will be revised to depict conditions at the completion of the project.

#### *D. Additional Services*

The design and approval process may require additional information not described above. However, since it is not possible to foresee all contingencies, I propose to provide you with a separate proposal if, or when, additional information is requested.

### **II. ACCESS:**

I will require access to the site during daylight hours, including the key(s) to all locked gates or doors, if any.

### **III. SCHEDULING:**

In light of my current commitments and the recent snowfall, I will begin the initial phase of this project in approximately 2 months. The remaining phases will follow as your schedule requires.

### **IV. FEES:**

The Topographic Map and Improvement Location Map described above will be performed for the following fixed fees:

*Topographic Map*  
*Improvement Location Map*

*\$2,950 fixed fee*  
*1,850 fixed fee*

The field and office services involved in Staking Proposed Grades cannot be determined at this time. You may budget approximately \$2,500 for this phase. I would be pleased to provide a fixed fee once the scope of work has been determined.

**V. AUTHORIZATION AND PAYMENT:**

Your authorization for me to proceed simply requires the return of one (1) copy of this Proposal signed, dated and duly authorized. Payment for each phase is due upon completion of the phase.

If we are instructed in writing to stop work for any reason, payment for services rendered before the receipt of said notice to stop work is still due.

Please feel free to call me at (845) 855-3885 if you have any questions.

Thank you for the opportunity to submit this Proposal for Surveying Services. I look forward to receiving your authorization to proceed.

Sincerely,

Kenneth B. Salzmann, LS

ACCEPTED: \_\_\_\_\_  
signature

BY: \_\_\_\_\_  
please print

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

Enclosure: photos depicting site location





Stewart  
International  
Airport

Location of Survey

Lake Washington

Mid Valley Mall

Mt Saint M

South  
Downing  
Park Plann

Little  
Falls Park





Moulton Memorial  
Baptist Church

Area of survey

J & J Stamp & Coin



**RESOLUTION NO. \_\_\_\_\_ - 2017**

**OF**

**APRIL 6, 2017**

**A RESOLUTION AUTHORIZING THE  
EXTENSION OF TIME TO CLOSE TITLE ON THE PROPERTIES  
LOCATED AT 64 JOHNSTON STREET (SECTION 23, BLOCK 7, LOT 20) AND  
39 LUTHERAN STREET (SECTION 29, BLOCK 3, LOT 13)  
SOLD AT PRIVATE SALE TO BENTLEY MEEKER**

**WHEREAS**, by Resolution Nos.: 104-2016 and 105-2016 of April 25, 2016, the Council of the City of Newburgh, New York, authorized the sale of 5 parcels to Bentley Meeker with a closing of title to take place on or before July 25, 2016; and

**WHEREAS**, pursuant to the terms of sale, the purchaser requested and the City Manager granted an extension of time to close until September 25, 2016 to resolve outstanding title issues and for the purchaser to secure title insurance; and

**WHEREAS**, the purchaser closed title to 3 of the 5 parcels on September 23, 2016; and

**WHEREAS**, the title issues related to the parcels located and 64 Johnston Street (Section 23, Block 7, Lot 20) and 39 Lutheran Street (Section 29, Block 3, Lot 13) were more complicated and took more time to resolve and the purchaser has requested additional time to close; 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 properties located at 64 Johnston Street and 39 Lutheran Street is hereby authorized until June 30, 2017.

**RESOLUTION NO.: \_\_\_\_\_ - 2017**

**OF**

**APRIL 6, 2017**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
A LICENSE AGREEMENT WITH MOUNTAIN VALLEY GUIDES LLC  
FOR ACCESS TO AND THE USE OF THE WASHINGTON STREET BOAT LAUNCH  
AND UNICO PARK TO PROVIDE KAYAK RENTALS AND TOURS**

**WHEREAS**, by Resolution No. 54-2016 of March 14, 2016, the City Council of the City of Newburgh authorized the City Manager to enter into a license agreement with Mountain Valley Guides LLC for access to and the use of the Washington Street Boat Launch and Unico Park to provide kayak rentals and tours; and

**WHEREAS**, Mountain Valley Guides LLC and the City of Newburgh wish to renew the license agreement for the 2017 season; and

**WHEREAS**, the City Council has examined the license agreement annexed hereto and determined that entering into such license agreement is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager be and is hereby authorized to execute and enter into the attached license agreement, in substantially the same form and with other terms as Corporation Counsel may require, on behalf of the City of Newburgh, with Mountain Valley Guides LLC for access to and the use of the Washington Street Boat Launch and Unico Park.

## AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between:

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

MOUNTAIN VALLEY GUIDES LLC, a limited liability company having its principal place of business at 2 Idlewild Avenue, Cornwall-on-Hudson, New York 12520 hereinafter called "Licensee".

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

### ARTICLE 1: Term.

This Agreement shall run from May 26, 2017 to October 6, 2017

### ARTICLE 2: Obligation of the City.

A. The City shall grant to the Licensee a non-exclusive revocable license to access and the use of the Washington Street Boat Launch in the City of Newburgh for the purpose of launching kayaks in connection with providing kayak rentals and tours to the general public on Saturdays and Sundays and 3 Monday holidays during the period of time set forth in Article 1 above. The City will allocate parking spaces with parking passes for 2 trucks/trailers in the Washington Street Boat Launch parking area to the Licensee.

B. The City shall grant to the licensee a non-exclusive revocable license to access and the use of Unico Park in the City of Newburgh for the purpose of erecting a pop-up tent from which to sell tickets for the kayak rentals and tours during the time period set forth in Article 1 and Article 2, paragraph A above.

### ARTICLE 3: Obligation of Licensee.

A. The Licensee shall ensure that all supplies, including the tent, are stored off-site each night.

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

C. The Licensee agrees that he, she or it shall, at all times, comply with all rules and regulations adopted by the City for the operation of the Washington Street Boat Launch and Unico Park which are now in force or which may be hereafter adopted. The Licensee further agrees to comply with all rules, regulations, laws and ordinances promulgated the County of

Orange, State of New York including but not limited to the rules and regulations of the Orange County Department of Health. The Licensee further agrees to comply with all laws of the State of New York and the rules and regulations promulgated thereunder including but not limited to the Co-Operative Agreement between the City of Newburgh and the DEC dated June 6, 1997, as amended.

D. It is expressly understood and agreed by the parties hereto that the Licensee is an independent contractor and not an employee of the City and that any persons employed, retained or engaged by the Licensee to perform the services authorized hereunder shall be employees of the Licensee and not of the City. The Licensee shall inform persons so employed, retained or engaged of these facts.

E. The Licensee assumes all risk in the operation of this service and shall be solely responsible and answerable in damages for all accidents or injuries to persons or property and hereby covenants and agrees to indemnify and keep harmless the City and all Departments of the City of Newburgh and their officers and employees from any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature due to the negligence or improper conduct of the Licensee or any servant, agent or employee, which responsibility shall be limited to the insurance coverage herein provided for.

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

#### ARTICLE 4: Payment.

A. The Licensee shall pay to the City, as and for a fee for access to and the use of the Washington Street Boat Launch and Unico Park during the period of this agreement \$750.00.

#### ARTICLE 5: Insurance.

The Licensee shall not commence activities nor perform any work under this agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the City.

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

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

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

2. Property Damage Insurance in an amount not less than \$50,000.00 for damage on account of all occurrences.

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

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

#### ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

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

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

#### ARTICLE 7: Permits and Regulations.

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

#### ARTICLE 8: Termination of the Agreement.

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

1. (a) A party refuses or fails to perform any of its obligations under this agreement; or
- (b) A party fails or refuses to comply with all applicable laws or ordinances; or
- (c) A party is guilty of substantial violation of any provision of this agreement.

2. Each party, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days' notice to the other party, terminate the agreement for the party's convenience.

#### ARTICLE 9: Damages.

It is hereby mutually covenanted and agreed that the relation of the Licensee to the City as to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances arising out of the negligent performance, other than those wholly caused by Acts of God. The Licensee shall make good any damages that may occur in consequence of the performances or any part of it. The Licensee shall assume all blame, loss and responsibility of any nature by reason of the Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance or arising out of its activities licensed hereby.

#### ARTICLE 10: Indemnity and Save Harmless Agreement.

A. The Licensee agrees to indemnify and save the City, its officers, agents and employees harmless from any liability imposed upon the City, its officers, agents and/or employees arising from the negligence, active or passive, of the Licensee, which responsibility shall be limited to the insurance coverage herein provided and consistent with Article 3(E) of this Agreement.

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

#### ARTICLE 11: No Assignment.

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

#### ARTICLE 12: Required Provisions of Law.

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

#### ARTICLE 13: Notices and Communication.

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

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

TO: Bill Garrison, Licensee  
Mountain Valley Guides LLC  
2 Idlewild Avenue  
Cornwall-on-Hudson, New York 12520  
(845)

B. All communication concerning the Licensee's activities and programs provided under this Agreement shall be directed to the Licensee. The City shall not direct any official communication to those employed, retained or engaged by the Licensee to perform the services authorized hereunder unless otherwise directed in writing by the Licensee to the City.

#### ARTICLE 14: Waiver.

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

#### ARTICLE 15: Modification:

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

*Remainder of this page intentionally left blank*

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

THE CITY OF NEWBURGH

By: \_\_\_\_\_  
MICHAEL G. CIARAVINO  
City Manager  
Per Res. No.:



MOUNTAIN VALLEY GUIDES LLC

By: \_\_\_\_\_  
Bill Garrison

Approved as to form:

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

\_\_\_\_\_  
KATHRYN NIVINS  
City Comptroller

RESOLUTION NO.: 54 - 2016

OF

MARCH 14, 2016

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
A LICENSE AGREEMENT WITH MOUNTAIN VALLEY GUIDES LLC  
FOR ACCESS TO AND THE USE OF THE WASHINGTON STREET BOAT LAUNCH  
AND UNICO PARK TO PROVIDE KAYAK RENTALS AND TOURS

WHEREAS, Mountain Valley Guides LLC wishes to enter into a license agreement with the City of Newburgh for access to and the use of the Washington Street Boat Launch and Unico Park to provide kayak rentals and tours; and

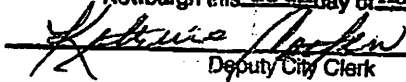
WHEREAS, a copy of such license agreement is annexed hereto and made a part of this resolution; and

WHEREAS, the City Council has examined such license agreement and determined it to be in the best interests of the City of Newburgh to enter into such license agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and is hereby authorized to execute and enter into the attached license agreement, in substantially the same form and with other terms as Corporation Counsel may require, on behalf of the City of Newburgh, with Mountain Valley Guides LLC for access to and the use of the Washington Street Boat Launch and Unico Park.

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held 3/14/16  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 15th day of March 2016

  
Deputy City Clerk

## AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between:

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

MOUNTAIN VALLEY GUIDES LLC, a limited liability company having its principal place of business at 2 Idlewild Avenue, Cornwall-on-Hudson, New York 12520 hereinafter called "Licensee".

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

### ARTICLE 1: Term.

This Agreement shall run from May 28, 2016 to October 22, 2016

### ARTICLE 2: Obligation of the City.

A. The City shall grant to the Licensee a non-exclusive revocable license to access and the use of the Washington Street Boat Launch in the City of Newburgh for the purpose of launching kayaks in connection with providing kayak rentals and tours to the general public on Saturdays and Sundays and 3 Monday holidays during the period of time set forth in Article 1 above. The City will allocate parking spaces with parking passes for 2 trucks/trailers in the Washington Street Boat Launch parking area to the Licensee.

B. The City shall grant to the licensee a non-exclusive revocable license to access and the use of Unico Park in the City of Newburgh for the purpose of erecting a pop-up tent from which to sell tickets for the kayak rentals and tours during the time period set forth in Article 1 and Article 2, paragraph A above.

### ARTICLE 3: Obligation of Licensee.

A. The Licensee shall ensure that all supplies, including the tent, are stored off-site each night.

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

C. The Licensee agrees that he, she or it shall, at all times, comply with all rules and regulations adopted by the City for the operation of the Washington Street Boat Launch and Unico Park which are now in force or which may be hereafter adopted. The Licensee further agrees to comply with all rules, regulations, laws and ordinances promulgated the County of

Orange, State of New York including but not limited to the rules and regulations of the Orange County Department of Health. The Licensee further agrees to comply with all laws of the State of New York and the rules and regulations promulgated thereunder including but not limited to the Co-Operative Agreement between the City of Newburgh and the DEC dated June 6, 1997, as amended.

D. It is expressly understood and agreed by the parties hereto that the Licensee is an independent contractor and not an employee of the City and that any persons employed, retained or engaged by the Licensee to perform the services authorized hereunder shall be employees of the Licensee and not of the City. The Licensee shall inform persons so employed, retained or engaged of these facts.

E. The Licensee assumes all risk in the operation of this service and shall be solely responsible and answerable in damages for all accidents or injuries to persons or property and hereby covenants and agrees to indemnify and keep harmless the City and all Departments of the City of Newburgh and their officers and employees from any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature due to the negligence or improper conduct of the Licensee or any servant, agent or employee, which responsibility shall be limited to the insurance coverage herein provided for.

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

#### ARTICLE 4: Payment.

A. The Licensee shall pay to the City, as and for a fee for access to and the use of the Washington Street Boat Launch and Unico Park during the period of this agreement \$750.00.

#### ARTICLE 5: Insurance.

The Licensee shall not commence activities nor perform any work under this agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the City.

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

B. General Liability and Property Damage Insurance - The Licensee shall take out and maintain during the life of this agreement such general liability and property damage insurance as shall protect it and the City which shall be named as additional insured on all such policies from claims for damages for personal injury including accidental death, as well as from claims for

property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows:

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

2. Property Damage Insurance in an amount not less than \$50,000.00 for damage on account of all occurrences.

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

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

#### ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

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

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

#### ARTICLE 7: Permits and Regulations.

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

#### ARTICLE 8: Termination of the Agreement.

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

1. (a) A party refuses or fails to perform any of its obligations under this agreement; or



(b) A party fails or refuses to comply with all applicable laws or ordinances; or

(c) A party is guilty of substantial violation of any provision of this agreement.

2. Each party, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days' notice to the other party, terminate the agreement for the party's convenience.

#### ARTICLE 9: Damages.

It is hereby mutually covenanted and agreed that the relation of the Licensee to the City as to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances arising out of the negligent performance, other than those wholly caused by Acts of God. The Licensee shall make good any damages that may occur in consequence of the performances or any part of it. The Licensee shall assume all blame, loss and responsibility of any nature by reason of the Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance or arising out of its activities licensed hereby.

#### ARTICLE 10: Indemnity and Save Harmless Agreement.

A. The Licensee agrees to indemnify and save the City, its officers, agents and employees harmless from any liability imposed upon the City, its officers, agents and/or employees arising from the negligence, active or passive, of the Licensee, which responsibility shall be limited to the insurance coverage herein provided and consistent with Article 3(E) of this Agreement.

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

#### ARTICLE 11: No Assignment.

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

#### ARTICLE 12: Required Provisions of Law.

Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or

otherwise, then upon the application of either party, this agreement shall be physically amended forthwith to make such insertion.

#### ARTICLE 13: Notices and Communication.

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

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

TO: Bill Garrison, Licensee  
Mountain Valley Guides LLC  
2 Idlewild Avenue  
Cornwall-on-Hudson, New York 12520  
(845)

B. All communication concerning the Licensee's activities and programs provided under this Agreement shall be directed to the Licensee. The City shall not direct any official communication to those employed, retained or engaged by the Licensee to perform the services authorized hereunder unless otherwise directed in writing by the Licensee to the City.

#### ARTICLE 14: Waiver.

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

#### ARTICLE 15: Modification:

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

*Remainder of this page intentionally left blank*

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

THE CITY OF NEWBURGH

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

MICHAEL G. CIARAVINO

City Manager

Per Res. No.: 54-2016

MOUNTAIN VALLEY GUIDES LLC

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

Bill Garrison

Approved as to form:

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

\_\_\_\_\_  
JOHN J. ABER  
City Comptroller





## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/04/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Specialty Ins Consultants, LLC 149 S. Andover Road, Suite A Andover, KS 67002 Jerri Keller	<b>CONTACT NAME:</b> Jerri Keller	
	<b>PHONE (A/C, No, Ext):</b> 844-558-5181	<b>FAX (A/C, No):</b> 316-260-1602
<b>INSURED</b> Mountain Valley Guides LLC Bill Garrison 22 Shadey Dell Dr New Windsor, NY 12553	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Starnet Insurance Company	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
<b>INSURER F:</b>		
<b>NAIC #</b> 40045		

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	DLS1000274-06	05/05/2016	05/05/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	DLS10000274-06	05/05/2016	05/05/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	X	CUA1100155-10	05/05/2016	05/05/2017	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below Y / N <input type="checkbox"/> N / A					PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**Guides or Outfitters - Tours involving kayaks**  
The certificate holder is included as additional insured with respects to the general liability policy, arising out of the operations of the named insured.

## CERTIFICATE HOLDER

## CANCELLATION

City of Newburgh  
83 Broadway  
Newburgh, NY 12550

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Heather K. Harris*

RESOLUTION NO.: \_\_\_\_\_ - 2017

OF

APRIL 6, 2017

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY  
KNOWN AS 56 BENKARD AVENUE (SECTION 45, BLOCK 3, LOT 18)  
AT PRIVATE SALE TO JUSTIN TORRES AND MIGUEL A. TORRES, JR.  
FOR THE AMOUNT OF \$9,000.00**

**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 56 Benkard Avenue, being more accurately described as Section 45, Block 3, Lot 18 on the official tax map of the City of Newburgh; and

**WHEREAS**, the prospective buyers have 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 buyers 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 purchasers 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 July 7, 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>
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56 Benkard Avenue	45 – 3 – 18	Justin Torres Miguel A. Torres, Jr.	\$9,000.00
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**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 Sale

### 56 Benkard Avenue, City of Newburgh (45-3-18)

#### STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and 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 lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
7. 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.

8. 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.
9. 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.
10. 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.
11. 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 July 7, 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.
12. 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.
13. 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.
14. 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.**
15. 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.

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed.
18. 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.: \_\_\_\_\_ - 2017

OF

APRIL 6, 2017

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY  
KNOWN AS 31 BENKARD AVENUE (SECTION 45, BLOCK 5, LOT 1)  
AT PRIVATE SALE TO ABRAHAM BRAVER FOR THE AMOUNT OF \$15,150.00**

**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 31 Benkard Avenue, being more accurately described as Section 45, Block 5, Lot 1 on the official tax map of the City of Newburgh; and

**WHEREAS**, the prospective buyers have 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 buyers 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 purchasers 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 July 7, 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>
31 Benkard Avenue	45 – 5 – 1	Abraham Braver	\$15,150.00

**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 Sale

### 31 Benkard Avenue, City of Newburgh (45-5-1)

#### STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and 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.
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7. 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.



8. 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.
9. 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.
10. 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.
11. 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 July 7, 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.
12. 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.
13. 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.
14. 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.**
15. 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.

16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed.
18. 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.: \_\_\_\_\_ - 2017

OF

APRIL 6, 2017

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY  
KNOWN AS 189 NORTH MILLER STREET (SECTION 11, BLOCK 1, LOT 17)  
AT PRIVATE SALE TO PINCHAS KORN FOR THE AMOUNT OF \$4,920.00**

**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 189 North Miller Street, being more accurately described as Section 11, Block 1, Lot 17 on the official tax map of the City of Newburgh; and

**WHEREAS**, the prospective buyers have 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 buyers 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 purchasers 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 July 7, 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>
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189 North Miller Street	11 – 1 – 17	Pinchas Korn	\$4,920.00
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**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 Sale

### 189 North Miller Street, City of Newburgh (11-1-17)

#### STANDARD TERMS:

1. City of Newburgh acquired title to these properties in accordance with Article 11 of the Real Property Tax Law of the State of New York, and 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 lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
7. 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.

8. 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.
9. 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.
10. 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.
11. 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 July 7, 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.
12. 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.
13. 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.
14. 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.**
15. 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.



16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed.
18. 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.:**\_\_\_\_\_ **- 2017**

**OF**

**APRIL 6, 2017**

**A RESOLUTION AUTHORIZING THE TRANSFER OF REAL PROPERTY  
TO THE NEWBURGH COMMUNITY LANDBANK**

**WHEREAS**, the Newburgh Community Land Bank was incorporated pursuant to Article 16 and Section 402 of the Not-for-Profit Corporation Law and is a Type C Not-For-Profit corporation as defined in Section 201 of the Not-For-Profit Corporation Law; and

**WHEREAS**, the mission of the Newburgh Community Land Bank is to stimulate planning, economic development and neighborhood revitalization by acquiring, managing and disposing of vacant, abandoned and underutilized properties in a responsible manner in collaboration with community stakeholders, developers and other governmental agencies in order to improve the quality of life in Newburgh; and

**WHEREAS**, upon the request of the Newburgh Community Land Bank, this Council has determined that transferring title of the parcels on the attached Schedule "A" is in the best interests of the City of Newburgh and its further development;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Newburgh that the sale of the properties on the list attached hereto as Schedule "A" to the Newburgh Community Land Bank be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to the Newburgh Community Land Bank; and

**BE IT FURTHER RESOLVED**, that the City Council of the City of Newburgh the properties are to be transferred to the Newburgh Community Land Bank subject to the Disposition Policies of the Newburgh Community Land Bank annexed hereto and made part hereof as Schedule "B"; and

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

## SCHEDULE "A"

SECTION	BLOCK	LOT	STREET NUMBER	STREET
23	7	4	61	Campbell Street
23	2	13	62	Campbell Street
23	2	16	68	Campbell Street
45	10	16	126	Carson Avenue
45	10	18	130	Carson Avenue
45	10	20	134	Carson Avenue
45	10	23	140	Carson Avenue
18	4	22	135	Chambers Street
18	4	21	137	Chambers Street
29	5	18	35	Dubois Street
30	2	1	193	First Street
30	2	9	45	Johnston Street
30	4	39	45A	Lander Street
23	3	19	85	Lander Street
18	4	34	133	Lander Street
18	4	35	135	Lander Street
18	4	36	137	Lander Street
18	4	37	139	Lander Street
18	3	8	168	Lander Street
30	1	18	23	S. Miller Street
30	1	17	25	S. Miller Street
44	3	14	116	William Street
44	3	15	118	William Street
44	3	17	122	William Street
45	15	15	123	William Street
45	15	14	125	William Street
44	3	19	126	William Street
44	3	20	128	William Street

NEWBURGH COMMUNITY LAND BANK  
DISPOSITION OF REAL AND PERSONAL PROPERTY POLICY

SECTION 1. PURPOSE. This policy (the "Policy") sets forth guidelines for the Land Bank's disposal of real and personal property in accordance with the mission and purpose of the Land Bank and all applicable law.

SECTION 2. DEFINITIONS.

- a. "Land Bank" shall mean the Newburgh Community Land Bank.
- b. "Contracting Officer" shall mean the person responsible for the Land Bank's compliance with, and enforcement of, this Policy and such person shall be the Executive Director of the Land Bank.
- c. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with Section 2897 of the New York Public Authorities Law.
- d. "Property" shall mean personal property in excess of five thousand dollars (\$5,000) in value, real property regardless of value, and any other interest in property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

SECTION 3. GENERAL DUTIES.

- a. The Land Bank shall:
  - i. Maintain adequate inventory controls and accountability systems for all property owned by the Land Bank and under its control; ii. Periodically inventory such property to determine which property may be disposed of; iii. Produce a written report of such in accordance with Section 3(b); and iv. Transfer or dispose of such property as promptly as possible in accordance with this Policy.
- b. The Land Bank shall:
  - i. Publish, not less frequently than annually, a report listing all real property owned by the Land Bank. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Land Bank and the name of the purchaser for all such property sold by the Land Bank during such period; and
  - ii. Deliver copies of such report to all agencies required by law including the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, the Director of the Authority Budget Office and the New York State Legislature (via distribution to the majority leader of the senate and the speaker of the assembly).

iii. Maintain and make available for public review and inspection a complete inventory of all real property dispositions by the Land Bank. Such inventory shall include a complete copy of the sales contract including all terms and conditions including, but not limited to, any form of compensation received by the Land Bank or any other party which is not included within the sale price. All property dispositions shall be listed on the property disposition inventory established pursuant to this subsection (iii) of this Section 3(b) within one week of disposition. Such records shall remain available for public inspection in the property disposition inventory indefinitely.

#### SECTION 4. TRANSFER OR DISPOSITION OF PROPERTY.

a. **Supervision and Direction.** Except as otherwise provided herein, the Contracting Officer shall have supervision and direction over the disposition and sale of property of the Land Bank. The Land Bank shall have the right to dispose of its property for any valid purpose.

b. **Custody and Control.** The custody and control of Land Bank property, pending its disposition, shall be performed by the Contracting Officer.

c. **Method of Disposition.** Unless otherwise permitted, the Land Bank shall dispose of property for not less than its fair market value by sale, exchange, or transfer, for cash, credit, or other consideration as provided for herein, with or without warranty, and upon such other terms and conditions as the Land Bank or the Contracting Officer deems proper. The Contracting Officer may execute such documents for the transfer of title or other interest in property and take such other action as is necessary or proper to dispose of such property under the provisions of this section. Provided, however, except in compliance with all applicable law, no disposition of real property, or any interest in real property shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction, and, provided further, that no disposition of any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property shall be made without a similar appraisal.

d. **Validity of Deed, Bill of Sale, Lease, or Other Instrument.** A deed, bill of sale, lease, or other instrument executed by or on behalf of the Land Bank, purporting to transfer title or any other interest in property of the Land Bank in accordance herewith shall be conclusive evidence of compliance with the provisions of this Policy and all applicable law insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to transfer of title of such property.

e. **Bids for Disposal; Advertising.**



i. Except as permitted by applicable law, all disposals or contracts for disposal of property made or authorized by the Land Bank shall be made after publicly advertising for bids except as provided in Section 4(f).

ii. Whenever public advertising for bids is required under subsection (i) of this Section 4(e):

1. the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property proposed for disposition;

2. all bids shall be publicly disclosed at the time and place stated in the advertisement;

3. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the advertisement for bids, will be most advantageous to the Land Bank, price and other factors considered; provided, that all bids may be rejected at the Land Bank's discretion.

**f. Disposal of Property by Negotiation or Public Auction.** Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to Section 4(e) but subject to obtaining such competition as is feasible under the circumstances, if:

i. the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or the personal property is to be sold in such quantity that, if it were disposed under subsections (i) and (ii) of this Section 4(e), would adversely affect the state or local market for Page 4 of 10 such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

ii. the fair market value of the property does not exceed fifteen thousand dollars;

iii. bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

iv. the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

v. the disposal is made pursuant to Section 4(g); or

vi. such action is otherwise authorized by law.

**g. Disposal of Property for Less than Fair Market Value.**

i. No asset owned, leased or otherwise in the control of the Land Bank may be sold, leased, or otherwise alienated for less than its fair market value except if:

1. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity; or

2. the purpose of the transfer is within the purpose, mission or governing statute of the Land Bank; or

3. such action is otherwise authorized by law.

ii. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Board of Directors of the Land Bank and the public:

1. a full description of the asset;

2. an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Land Bank;

3. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;

4. a statement of the value to be received compared to the fair market value;

5. the names of any private parties participating in the transfer, and if different than the statement required by subsection 4 of this Section 4(g)(ii), a statement of the value to the private party; and

6. the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

iii. Before approving the disposal of any property for less than fair market value, the Board of Directors of the Land Bank shall consider the information described in subsection (ii) of this Section 4(g) and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.

**h. Board Approval for Disposition of Property.** The Land Bank shall not sell, lease, encumber, or alienate real property, improvements, or personal property unless authorized by a majority vote of the Board of Directors.

**i. Explanatory Statement.**

i. An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

1. any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

2. any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to subsections (3) and (4) of this Section 4(i);

3. any real property disposed of by lease if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars;

4. any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

ii. Each explanatory statement shall be transmitted to the persons or agencies entitled to receive copies of the report required under applicable law not less than ninety (90) days in advance of such disposal, and a copy thereof shall be preserved in the files of the Land Bank.

## **SECTION 5. BUYER QUALIFICATIONS AND PRIORITIES AS TO THE NATURE OF THE TRANSFEREE**

### **a. Land Disposition Policies**

1. The transferee must not own any real property that: a) has any unremediated citation or violation of the state and local codes and ordinances; b) a history of chronic code citations or violations of the state and local codes and ordinances; c) is tax delinquent; d) was transferred to a local government as a result of tax foreclosure proceedings.

2. The transferee must not have any judgments against them during the past 5 years regarding a landlord/tenant issue.
3. All tax incentives and financing necessary for the development to be completed must be committed for the development prescribed in the development agreement prior to actual disposition.
4. Options to purchase real estate may be available for a specified percentage of the purchase price with a negotiated time frame to be determined by the Land Bank. This fee will be credited to the parcel price at closing. If closing does not occur, the fee is forfeited. All option agreements are subject to all policies and procedures of the Land Bank pertaining to property transfers.
5. A precise narrative description of future use of the property is required. The future use must be in-line with local development plans. The development agreement shall apply to stated use.
6. The proposed use must be consistent with current zoning requirements or a waiver for non-conforming use is a condition precedent to the transfer.
7. Transactions shall be structured in a manner that permits the Land Bank to enforce recorded covenants or conditions upon title pertaining to development and use of the property for a specified period of time. Such restrictions may be enforced, in certain cases, through reliance on subordinate financing held by the Land Bank.
8. Any non-local residents or entities with a local agent may acquire Land Bank property only with an enforceable plan to place the property into immediate productive use (meaning the property is to be occupied immediately or with the immediate commencement of some form of development project that fits the stated mission of the Land Bank). This applies to all real property.
9. Any exception to the policies governing disposition shall be taken to the governing body of the Land Bank for approval.
10. If code or ordinance violations exist with respect to the property at the time of the transfer, the development or transfer agreements shall specify a maximum period of time for elimination or correction of such violations, with the period of time be established as appropriate to the nature of the violation of the anticipated redevelopment or reuse of the property.
11. The subject property must not have been used by the transferee or a family member of the transferee as his or her personal residence at any time preceding the submission of application (except in rental cases).

12. The Land Bank will consider 'Land Leasing' as a method of disposition in any transactions.

13. Where part or all of the consideration for the transfer is the prospective affordability of the housing units, affordability requirements may be set forth in the transfer agreement and enforceable through recorded covenants, conditions or limitations upon title.

**b. The following additional policies shall apply to properties to be transferred to individual transferees as part of a homeownership program.**

1. The owner-occupant must complete renovations and move into the structure within a time frame negotiated by the Land Bank.

2. The property may not be used solely as rental property.

3. For properties transferred for cash consideration below full fair market value of the property, the owner-occupant must reside in the property as his or her primary residence for at least a 5-year period. If the property is sold prior to the 5-year period, the transferee must either:  
a) sell the property for no more than the purchase price from the Land Bank plus all cost of property improvements; or b) repay the land bank the difference between the purchase price and the initial fair market value.

**SECTION 6. MISCELLANEOUS.**

a. Modification and Amendment; Filing. These guidelines are subject to modification and amendment at the discretion of the Land Bank and shall be filed annually with all local and state agencies as required under applicable law.

b. Posting on the Land Bank Website. This Policy shall be posted on the Land Bank's website.

c. Annual Review. This Policy shall be reviewed annually by the Land Bank

**RESOLUTION NO.: \_\_\_\_\_ - 2015**

**OF**

**APRIL 6, 2017**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR  
AND ACCEPT IF AWARDED A UNITED STATES DEPARTMENT OF JUSTICE  
VIOLENT GANG AND GUN CRIME REDUCTION PROGRAM GRANT  
(PROJECT SAFE NEIGHBORHOODS) IN THE AMOUNT OF \$397,345.00  
WITH NO CITY MATCH REQUIRED**

**WHEREAS**, the City of Newburgh Police Department has advised that grant funding is available from the United States Department of Justice (“DOJ”) FY2017 Violent Gang and Gun Crime Reduction Program (Project Safe Neighborhoods [“PSN”]); and

**WHEREAS**, PSN is designed to create safer neighborhoods through a sustained reduction in crime by providing support to state, local and tribal efforts to reduce gun and gang-related violent crime; and

**WHEREAS**, the purpose of PSN is to reduce gun crime and gang violence by the most violent offenders in the most violent neighborhoods by employing a research-driven, intelligence-led, and problem-solving approach to reduce firearms and gang violence through enforcement, deterrence, and prevention; and

**WHEREAS**, the City of Newburgh Police Department wishes to apply for funding with a maximum grant award of \$397,345.00 with no City match required, except the City of Newburgh will be responsible for certain fringe benefit costs which are not covered by the grant; and

**WHEREAS**, if awarded, the City of Newburgh Police Department would use the funding, in conjunction with the US Attorney’s Office for the Southern District of New York and the Center for Court Innovation, to support a group violence intervention project; and

**WHEREAS**, the grant request includes funding for a Lieutenant and overtime for two officers to support investigations and enforcement action as well as for equipment for the program; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a United States Department of Justice FY2017 Violent Gang and Gun Crime Reduction Program Grant (Project Safe Neighborhoods) in the amount of \$397,345.00, with no City match required; and that the City Manager is authorized to execute all such contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the program funded thereby.



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.: 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](http://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](mailto:robert.ostapczuk@arcadis.com)

Our ref:  
04881005.0000

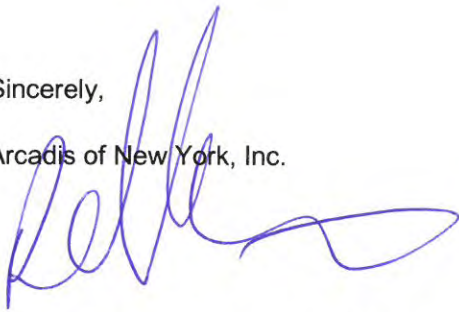
Arcadis proposes to complete the additional services on a not to exceed time and material basis for a total budget of \$144,500. Please see the attached Project Budget for a breakdown of effort by task. It should be noted that Arcadis has estimated that \$65,956, or 46% of the project budget, will be 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



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AMENDMENT No. 1

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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.

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AMENDMENT No. 1

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- 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\***

<b>Program</b>	<b>Goal</b>
CWSRF, DWSRF, & GIGP	20%
<b><i>NYS Water Grants (also receiving EFC Loan)</i></b>	
CWSRF	23%
DWSRF	26%
<i>NY Water Grants (grant only)</i>	30%
<b><i>Engineering Planning Grant</i></b>	
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%

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**AMENDMENT No. 1**

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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\***

<b>Program</b>	<b>Goal</b>
CWSRF, DWSRF, & GIGP	20%
<b><i>NYS Water Grants (also receiving EFC Loan)</i></b>	
CWSRF	23%
DWSRF	26%
<i>NY Water Grants (grant only)</i>	30%
<b><i>Engineering Planning Grant</i></b>	
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

## Agenda Item 14.

### **Local Law Allowing Reciprocal Licensing Agreements for Electricians in Other Jurisdictions**

Resolution scheduling a public hearing for April 24, 2017 to hear public comment concerning a Local Law amending Chapter 155 of the Code of Ordinances of the City of Newburgh to add a new section entitled "Reciprocal Licensing". (Michelle Kelson)

#### **Background:**

Other municipalities sometimes express interest in entering into "Reciprocal Licensing Agreements," where professionals licensed in that jurisdiction would be permitted to operate in Newburgh, provided that the professional held a valid license in the other municipality.

This proposed law would apply to electricians. The City of Newburgh Board of Electrical Examiners would be empowered to review licensing criteria in another municipality to see if those requirements met or exceeded those in the City of Newburgh. If so, the Board could then enter a Reciprocal License Agreement with the other municipality. Licensed electricians both in Newburgh and the other jurisdiction would be permitted to operate in both jurisdictions. The applicant would still be responsible for paying the licensing fees in both jurisdictions and maintaining the good standing of the license.

This would expand the pool of licensed electricians in the City of Newburgh and provide other business opportunities for electricians licensed by the City's Board of Electrical Examiners.

#### **ATTACHMENTS:**

Description	Upload Date	Type
Resolution scheduling a public hearing for April 24, 2017 to hear comments concerning a local law amending Chapter 155 to add new section entitled "Reciprocal Licensing"	3/27/2017	Resolution Letter
Draft Local Law Amending Chapter 155 of the Code of Ordinances to Include a Section titled "Reciprocal Licensing"	3/27/2017	Exhibit

**RESOLUTION NO.: \_\_\_\_\_ - 2017**

**OF**

**APRIL 6, 2017**

**RESOLUTION SCHEDULING A PUBLIC HEARING FOR APRIL 24, 2017  
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW AMENDING  
CHAPTER 155 OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH TO  
ADD  
A NEW SECTION ENTITLED “RECIPROCAL LICENSING”**

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a Local Law amending Chapter 155 of the Code of Ordinances of the City of Newburgh to add a new section entitled “Reciprocal Licensing”; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 24<sup>th</sup> day of April, 2017, in the 3<sup>rd</sup> Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

LOCAL LAW NO.: \_\_\_\_\_ - 2017

OF

\_\_\_\_\_, 2017

**A LOCAL LAW AMENDING CHAPTER 155, ARTICLE II  
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH  
TO INCLUDE A NEW SECTION ENTITLED, "RECIPROCAL LICENSING"**

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

**SECTION 1 - TITLE**

This Local Law shall be referred to as "A Local Law Amending Chapter 155, Article II of the Code of Ordinances of the City of Newburgh to Include a New Section entitled 'Reciprocal Licensing'".

**SECTION 2 - PURPOSE AND INTENT**

The City of Newburgh City Council, in order to properly protect the public health, safety and welfare of the residents of the City of Newburgh, hereby further regulates the licensing of electricians.

The intent of this amendment is to empower the City of Newburgh Board of Electrical Examiners, in addition to its other powers and duties contained in Chapter 30 of the Code of Ordinances, to determine whether the qualifications for a master electrician's license or a special electrician's license as required by a municipality located outside of the City of Newburgh are comparable with the qualifications established in Chapters 30 and 155 of the Code of Ordinances, and in the event that the qualifications are comparable, to enter into reciprocal licensing agreements with other municipalities.

**SECTION 3 - AMENDMENT**

The Code of Ordinances of the City of Newburgh is hereby amended to add the following section to Article II of Chapter 155 entitled "Licensing of Electricians" and to read as follows:

**§155-28      Reciprocal Licenses.**

Notwithstanding the requirements found contained in this Chapter, the Board is hereby authorized to enter into reciprocal licensing agreements with other municipalities in which a holder in good standing of a current master electrician's license or special electrician's license in one municipality shall be allowed to perform work in the other municipality. Such agreements shall be executed only upon a review of the examination standards of the other municipality and a



determination that those standards meet or exceed the standards required by this Chapter and any additional standards adopted by the Board. The licensee shall be responsible for the payment of the license fees in each jurisdiction.

#### **SECTION 4 - VALIDITY**

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

#### **SECTION 5 - EFFECTIVE DATE**

This Local Law and shall be effective when it is filed in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

**RESOLUTION NO.: \_\_\_\_\_ - 2017**

**OF**

**APRIL 6, 2017**

**RESOLUTION SCHEDULING A PUBLIC HEARING FOR APRIL 24, 2017  
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW AMENDING  
CHAPTER 172 OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH  
TO ADD “ARTICLE II – FIREWORKS AND SPARKLING DEVICES”**

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a Local Law amending Chapter 172 of the Code of Ordinances of the City of Newburgh to add “Article II – Fireworks and Sparkling Devices”; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 24<sup>th</sup> day of April, 2017, in the 3<sup>rd</sup> Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

**LOCAL LAW NO.: \_\_\_\_\_ - 2017**

**OF**

**\_\_\_\_\_, 2017**

**A LOCAL LAW AMENDING CHAPTER 172 OF THE CODE OF ORDINANCES  
OF THE CITY OF NEWBURGH TO ADD “ARTICLE II –  
FIREWORKS AND SPARKLING DEVICES”**

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

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law Amending Chapter 172 of the Code of Ordinances of the City of Newburgh to add ‘Article II – Fireworks and Sparkling Devices’”.

**SECTION 2 - PURPOSE AND INTENT**

Chapter 477 of the Laws of 2014 for New York State authorized counties and cities outside of New York City to legalize sparklers and certain sparkling devices (collectively referred to as “sparkling devices”) for sale, possession and use. By Local Law No. 1 of 2015 effective April 10, 2015, Orange County opted to legalize sparking devices throughout Orange County. In response to concerns for the health, safety and welfare of the residents of the cities in Orange County, the Orange County Legislature and the Common Council of the City of Middletown adopted resolutions asking the New York State Legislature to reconsider the sparkling device legislation and allow cities within Orange County to opt out of the Orange County local law permitting the sale, possession and use of sparkling devices.

Chapter 458 of the Laws of 2016 for New York State, effective November 28, 2016, codified as New York State Penal Law Section 405.00(5)(c), allows a city within Orange County to adopt a local law to include sparkling devices within the definition of “fireworks” and “dangerous fireworks” as defined in the New York State Penal Law Section 270 and as applied and enforced through New York State Penal Law Section 405.00.

The purpose of this local law is to promote the public health, safety and welfare of the City of Newburgh by including the term “sparkling device” into the definitions of “fireworks” and “dangerous fireworks,” as those terms are defined in the New York State Penal Law Section 270 and as applied and enforced through New York State Penal Law Section 405.00 within the City of Newburgh.

**SECTION 3 - AMENDMENT**

The Code of Ordinances of the City of Newburgh is hereby amended to add an Article II entitled “Fireworks and Sparkling Devices” to Chapter 172 and to read as follows:

**“CHAPTER 172, ARTICLE II: FIREWORKS and SPARKLING DEVICES”**

**§172-14. Definitions.**

As used in this article, the following terms shall have the following meanings:

SPARKLING DEVICE – shall have the same meaning as the term “sparkling device” is defined in the New York State Penal Law Section 270.00(1)(a)(vi).

FIREWORKS – shall have the same meaning as the term “fireworks” is defined in the New York State Penal Law Section 270.00(1)(a).

DANGEROUS FIREWORKS – shall have the same meaning as the term “dangerous fireworks” is defined in the New York State Penal Law Section 270.00(1)(b).

**§ 172-15. Applicability.**

This article shall apply to all persons within the limits of the City of Newburgh.

**§ 172-16. Possession, sale or use declared hazard and nuisance.**

The possession, sale or use of fireworks, dangerous fireworks, or sparkling devices in the City of Newburgh is hereby deemed to constitute a hazard and nuisance to the health, safety and welfare of the public.

**§ 172-17. Merger of terms.**

Pursuant to New York State Penal Law Section 405.00(5)(c), a sparkling device is hereby included within the definition of fireworks and dangerous fireworks.

**§ 172-18. Penalties for offenses.**

Any persons who shall violate any provisions of this Article shall be punished as provided in the New York State Penal Law Section 270 as applied and enforced by New York State Penal Law Section 405.00.

**§ 172-19. Severability**

The provisions of this Local Law are declared to be severable, and if any section or subsection of this Local Law is held to be invalid, such invalidity shall not affect the other provisions of this Local Law that can be given effect without the invalidated provision.

#### **SECTION 4 - VALIDITY**

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

#### **SECTION 5 – EFFECTIVE DATE**

This Local Law and shall be effective when it is filed in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

**Homeland Security and Emergency Services**

Emergency Management

State Fire

Counter Terrorism

Interoperable and Emergency Communications

Programs

**Fire Prevention  
and Control****Sparkling Devices Information**

A recent change in New York State Penal Law now allows for the sale and use of a specific category of consumer fireworks known as *Sparkling Devices*.

*Sparkling Devices* are ground based or handheld devices that produce a shower of colored sparks and or a colored flame, audible crackling or whistling noise and smoke. The law limits the type, size and construction of *Sparkling Devices* and requires that these devices must be hand held or mounted on a base or spike and be limited in sizes that range from 1 to 500 grams of pyrotechnic composition.

Sale and use of *Sparkling Devices* will be legal only in counties and cities that have enacted a local law pursuant to section 405.00 of the Penal Law of NY.

Click below to see the applicable sections of the Penal Law:

[Read Section 270.00 of the Penal Law](#)

[Read Section 405.00 of the Penal Law](#)

Click below to see the applicable section of the NY State Fire Code:

[Read Dept. of State Rule 1228](#)

Title 9 of the Official Compilation of New York Codes, Rules, and Regulation is amended by adding a new Part 225 titled Sparkling Devices.

Click below to see the full text of the rule:

[Part 225](#)

Click below to see information on counties and cities where sparkling devices can be legally purchased and used.

<http://troopers.ny.gov/Publications/>

All sellers, wholesalers, manufacturers and distributors of Sparkling Devices who wish to do business in New York State or otherwise sell, ship, or assign for sale its products into New York State are required to apply for a certification with the Office of Fire Prevention and Control, pay an annual fee and be subject to other rules and conditions. OFPC has developed a certification process that is outlined in the documents below.

**Forms and Documents:**

[Application for Sparkling Devices Certification](#) - Registration Form for a certificate for the: Retail Sale, Distribution, Wholesale or Manufacture of Sparkling Devices.

[Instructions for Applying for Sparkling Devices Certification](#) - Guidance on how to complete the registration forms.

[Sparkling Devices Application Checklist](#) - To ensure timely processing of your application, this checklist will help ensure necessary items are met and/or included with your application.

[Notice of Sparkler Fire and Explosion](#) - Pursuant to Title 9 NYCRR Part 225, every manufacturer, distributor, wholesaler, specialty retailer, permanent retailer and temporary seasonal retailer shall report to the Office of Fire Prevention and Control basic information relating to all fires or explosions, including any accidental discharge of sparkling devices that occur on premises. This report shall be submitted within 24 hours of the occurrence or discovery of the fire or explosion.

[Sparkler Safety Information](#) - Flyer with safety tips and facts, as well as links to helpful sites.

**Important Notes:**

*Sales of Sparkling Devices by certified permanent and specialty retailers can only occur from June 1 to July 5 and December 26 to January 1.*

*Sales of Sparkling Devices by certified temporary stands or tents can only occur from June 20 to July 5 and December 26 to January 1.*

*All other types of consumer fireworks, including firecrackers, bottle rockets, roman candles, spinners and aerial devices, remain illegal statewide.*

*Notice of Adoption*

**Permanent Rule - Effective June 3, 2015**

## **Sparkling Devices**

The Department of State has adopted a rule that amends the Uniform Code by adding provisions applicable to "sparkling devices." The rule text is available by [clicking here](#).

### **Chapter 477 of the Laws of 2014**

Recently, Governor Cuomo signed a bill that amends the Penal Law definition of fireworks to include several categories of devices, including "sparkling devices," and authorizes any city (except the City of New York) or county (except those within the City of New York) to adopt a local law legalizing sparkling devices in such City or County.

### **Local Laws**

Under the new provision of the Penal Law, Cities or Counties wishing to be covered by this legislation must affirmatively enact a local law to legalize the possession, manufacture, storage, handling, sale and use of "sparkling devices" within their jurisdiction.

### **Uniform Fire Prevention and Building Code**

The Department of State adopted a rule that adds provisions applicable to "sparkling devices" to the Uniform Fire Prevention and Building Code (Uniform Code). The rule applies to buildings where sparkling devices are manufactured, stored, sold or used; and will establish provisions to reduce the risk of fire in buildings resulting from the manufacture, storage, sale or use of sparkling devices. These new provisions are based on provisions found in the 2015 International Fire Code and will be contained in a new Section 1228.3 to be added to 19 NYCRR Part 1228.

A rule in is available by [clicking here](#).

## **2015 LOCAL LAWS OF ORANGE COUNTY**

### **LOCAL LAW NO. 1 OF 2015**

#### **A LOCAL LAW TO AUTHORIZE THE SALE AND USE OF SPARKLING DEVICES.**

**BE IT ENACTED**, by the Legislature of the County of Orange, as follows:

##### **SECTION ONE. Legislative Findings.**

The Orange County Legislature finds that the enacted State law, Chapter 477 of the Laws of 2014 amended the State Penal Law, the Executive Law, and the General Business Law with the intent to modernize the statute dealing with illegal fireworks, provide additional definitions of what constitutes fireworks and dangerous fireworks and remove certain novelty devices, which are not recognized as fireworks by the federal government, out of the definition of fireworks.

The Orange County Legislature finds that through the modernization of the statute and clearly defining the terms fireworks, dangerous fireworks and novelty devices, the new law provides law enforcement with an important tool in reducing the use of illegal fireworks and homemade devices and encourages the use of safe and legally regulated novelty devices.

The Orange County Legislature finds the new law allows sparkling devices to be sold and used in municipalities that affirmatively enact a local law authorizing the exclusion "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks".

The Orange County Legislature finds that allowing residents and visitors the opportunity to use safe "sparkling devices" will benefit them and local businesses.

The Orange County Legislature finds that only those who are 18 years of age or older may purchase sparkling devices and that the sparkling devices shall only be sold between June 1<sup>st</sup> and July 5<sup>th</sup> and December 26<sup>th</sup> and January 2<sup>nd</sup> of each calendar year.

The Orange County Legislature further finds that all distributors, manufacturers, and retailers of sparkling devices must be licensed through the New York State Department of State.

##### **SECTION TWO. Authorized sale and use of sparkling devices.**

1. Pursuant to section 405 (5) (b) of the New York State Penal Law (Penal Law) and Penal Law section 270 (3)(b)(v) as enacted by Chapter 477 of the Laws of 2014, "sparkling devices" shall be excluded from the definition of "fireworks" and "dangerous fireworks" as those terms are defined by Penal Law sections 270(1)(a)(i) and 270(1)(b) respectively.

2. The sale and use of "sparkling devices" as defined in Penal Law section 270(1)(a)(vi) which is incorporated hereunder shall be lawful in Orange County provided such sale and use are not in violation of Section 270 of the Penal Law or any rules and regulations thereunder.

3. "Sparkling Devices" are defined as follows:

"Sparkling Devices" which are ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored



flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (an audible crackling-type effect is not considered to be a report). Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category. Types of devices in this category include:

- (1) cylindrical fountain: cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that may be contained in a different shaped exterior such as a square, rectangle, cylinder or other shape but the interior tubes are cylindrical in shape. Upon ignition, a shower of colored sparks, and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle to be hand held (handle fountain). When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, and when tubes are securely attached to a base and the tubes are separated from each other on the base by a distance of at least half an inch (12.7 millimeters), a maximum total weight of five hundred grams of pyrotechnic composition shall be allowed.
- (2) cone fountain: cardboard or heavy paper cone containing not more than fifty grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, as is outlined in this subparagraph.
- (3) wooden sparkler/dipped stick: these devices consist of a wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to one hundred grams of pyrotechnic composition per item.
- 4) novelties which do not require approval from the United States department of transportation and are not regulated as explosives, provided that they are manufactured and packaged as described below:
  - (A) party popper: small devices with paper or plastic exteriors that are actuated by means of friction (a string or trigger is typically pulled to actuate the device). They frequently resemble champagne bottles or toy pistols in shape. Upon activation, the device expels flame-resistant paper streamers, confetti, or other novelties and produces a small report. Devices may contain not more than sixteen milligrams (0.25 grains) of explosive composition, which is limited to potassium chlorate and red phosphorus. These devices must be packaged in an inner packaging which contains a maximum of seventy-two devices.
  - (B) snapper: small, paper-wrapped devices containing not more than one milligram of silver fulminate coated on small bits of sand or gravel. When dropped, the device explodes, producing a small report. Snappers must be in inner packages not to exceed fifty devices each, and the inner packages must contain sawdust or a similar, impact-absorbing material.

### **SECTION THREE. Severability**

If any part of or provisions of this law, or the application thereof to any person or circumstance, shall be adjudged invalid by any court of competent jurisdiction, such judgment shall

be confined in its operation to the part of or provision of, or application directly involved in the controversy in which such the remainder of this law, or the application thereof to other persons or circumstances.

**SECTION FOUR. Effective date**

This local law shall take effect immediately upon filing with the New York State Secretary of State.

Local Law No. 1 of 2015 was passed on, March 5, 2015 by the following roll call vote:

Ayes: 18  
Noes: 3  
Absent: 0

Approved by the County Executive: March 26, 2015

Filed with the Secretary of State: April 10, 2015

Effective: April 10, 2015

2016 Sess. Law News of N.Y. Ch. 458 (A. 9455) (McKINNEY'S)

McKINNEY'S 2016 SESSION LAW NEWS OF NEW YORK

239th LEGISLATURE

Additions are indicated by **Text**; deletions by  
~~Text~~.

Vetoed are indicated by ~~Text~~ ;  
stricken material by ~~Text~~.

CHAPTER 458

A. 9455

Approved and effective November 28, 2016

AN ACT to amend the penal law, in relation to the sale and possession of fireworks in certain cities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 5 of section 405.00 of the penal law, as amended by chapter 477 of the laws of 2014, is amended to read as follows:

<< NY PENAL § 405.00 >>

5. Local ordinances superseded. (a) All local ordinances regulating or prohibiting the display of fireworks are hereby superseded by the provisions of this section. Every city, town or village shall have the power to enact ordinances or local laws regulating or prohibiting the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts.

(b) Further, no city or county shall be bound to include "sparkling device" in the definitions of "fireworks" and "dangerous fireworks" in section 270.00 of this chapter, if such city or county shall so authorize the exemption of "sparkling device" by law. If any such city or county so elects, it and such other local jurisdictions that lie within its geographical boundaries shall not enact any other local law that is inconsistent with the provisions of subparagraph (iv) of paragraph (c) of subdivision one of section 270.00 of this chapter, nor to regulate sparkling devices in a manner that is in conflict with the provisions of NFPA 1124, 2006 edition.

(c) Notwithstanding paragraph (b) of this subdivision, any city wholly contained within the county of Orange may enact a local law to include "sparkling device" within the definitions of "fireworks" and "dangerous fireworks" as defined in section 270.00 of this chapter, notwithstanding any local law enacted by such county that authorizes the exemption of "sparkling device" from such definition.

§ 2. This act shall take effect immediately.

**A09455 Summary:**

BILL NO A09455  
SAME AS SAME AS  
SPONSOR Gunther  
COSPNSR Brabenec  
MLTSPNSR

Amd §405.00, Pen L

Permits a city wholly within the county of Orange to opt out of a county law permitting the sale and possession of sparklers.

**A09455 Actions:**

BILL NO A09455

03/04/2016 referred to codes  
05/17/2016 reported  
05/19/2016 advanced to third reading cal.702  
05/24/2016 passed assembly  
05/24/2016 delivered to senate  
05/24/2016 REFERRED TO CODES  
06/08/2016 SUBSTITUTED FOR S6683  
06/08/2016 3RD READING CAL.1453  
06/08/2016 PASSED SENATE  
06/08/2016 RETURNED TO ASSEMBLY  
11/16/2016 delivered to governor  
11/28/2016 signed chap.458

**A09455 Memo:**

NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A9455

SPONSOR: Gunther

TITLE OF BILL: An act to amend the penal law, in relation to the sale and possession of fireworks in certain cities

**PURPOSE:**

To allow cities within Orange County to prevent the sale and possession of "sparkling devices" by having these devices be considered "fireworks" and/or "dangerous fireworks."

**SUMMARY OF PROVISIONS:**

Section 1: Amends subdivision 5 of section 405.00 of the Penal Law by adding a paragraph (c) to allow cities wholly within the County of Orange to enact local laws including "sparkling devices" within the definitions of "fireworks" and "dangerous fireworks" as defined by section 207.00.

Section 2: Effective date.

**JUSTIFICATION:**

The use of "sparkling devices" were authorized in Orange County pursuant to Local Law in 2013. With Orange County being so close to Pennsylvania, where many more firework devices are legal, there was an increase in the usage of both legal "sparkling devices" and "illegal fireworks" in the County. This caused a steep increase in complaints to the local police forces, causing them to look into unnecessary "quality of life" complaints. In acknowledgement of the issues that arose, the Orange County Legislature has requested legislation to provide the cities in Orange County the ability to "opt-out" of the county authorization.

**LEGISLATIVE HISTORY:**

New Bill.

**FISCAL IMPACT ON THE STATE:**

None.

**EFFECTIVE DATE:**

This act shall take effect immediately.

**A09455 Text:**

[http://assembly.state.ny.us/leg/?default\\_fld=&br=A+9455&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&br=A+9455&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y)

## STATE OF NEW YORK

9455

## IN ASSEMBLY

March 4, 2016

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the sale and possession of fireworks in certain cities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision 5 of section 405.00 of the penal law, as
- 2 amended by chapter 477 of the laws of 2014, is amended to read as
- 3 follows:
- 4 5. Local ordinances superseded. (a) All local ordinances regulating or
- 5 prohibiting the display of fireworks are hereby superseded by the
- 6 provisions of this section. Every city, town or village shall have the
- 7 power to enact ordinances or local laws regulating or prohibiting the
- 8 use, or the storage, transportation or sale for use of fireworks in the
- 9 preparation for or in connection with television broadcasts.
- 10 (b) Further, no city or county shall be bound to include "sparkling
- 11 device" in the definitions of "fireworks" and "dangerous fireworks" in
- 12 section 270.00 of this chapter, if such city or county shall so author-
- 13 ize the exemption of "sparkling device" by law. If any such city or
- 14 county so elects, it and such other local jurisdictions that lie within
- 15 its geographical boundaries shall not enact any other local law that is
- 16 inconsistent with the provisions of subparagraph (iv) of paragraph (c)
- 17 of subdivision one of section 270.00 of this chapter, nor to regulate
- 18 sparkling devices in a manner that is in conflict with the provisions of
- 19 NFPA 1124, 2006 edition.
- 20 (c) Notwithstanding paragraph (b) of this subdivision, any city wholly
- 21 contained within the county of Orange may enact a local law to include
- 22 "sparkling device" within the definitions of "fireworks" and "dangerous
- 23 fireworks" as defined in section 270.00 of this chapter, notwithstanding
- 24 any local law enacted by such county that authorizes the exemption of
- 25 "sparkling device" from such definition.
- 26 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LB013977-01-6

McKinney's Consolidated Laws of New York Annotated  
Penal Law (Refs & Annos)  
Chapter 40. Of the Consolidated Laws (Refs & Annos)  
Part Four. Administrative Provisions  
Title W. Provisions Relating to Firearms, Fireworks, Pornography Equipment and Vehicles Used in  
the Transportation of Gambling Records  
Article 405. Licensing and Other Provisions Relating to Fireworks (Refs & Annos)

McKinney's Penal Law § 405.00

§ 405.00 Permits for public displays of fireworks

Effective: December 21, 2014  
Currentness

1. Definition of "permit authority." The term "permit authority," as used in this section, means and includes the agency authorized to grant and issue the permits provided in this section. The permit authority on or within state property shall be the office of fire prevention and control. The permit authority for territory within a county park shall be the county park commission, or such other agency having jurisdiction, control and/or operation of the parks or parkways within which any fireworks are to be displayed. The permit authority in a city shall be the duly constituted licensing agency thereof and, in the absence of such agency, shall be an officer designated for the purpose by the legislative body thereof. The permit authority in a village shall be an officer designated for the purpose by the board of trustees thereof and the permit authority in the territory of a town outside of villages shall be an officer designated for the purpose by the town board thereof.

2. Permits for fireworks displays. Notwithstanding the provisions of section 270.00 of this chapter, the permit authority for state property, county parks, cities, villages, or towns may grant a permit for the display of fireworks to municipalities, fair associations, amusement parks, persons, or organizations of individuals that submit an application in writing. The application for such permit shall set forth:


(a) The name of the body sponsoring the display and the names of the persons actually to be in charge of the firing of the display who shall possess a valid certificate of competence as a pyrotechnician as required under the general business law and article sixteen of the labor law. The permit application shall further contain a verified statement from the applicant identifying the individuals who are authorized to fire the display including their certificate numbers, and that such individuals possess a valid certificate of competence as a pyrotechnician.

(b) The date and time of day at which the display is to be held.

(c) The exact location planned for the display.

(d) The number and kind of fireworks to be discharged.

(e) The manner and place of storage of such fireworks prior to the display.

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated

Penal Law (Refs & Annos)

Chapter 40. Of the Consolidated Laws (Refs & Annos)

Part Four. Administrative Provisions

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McKinney's Penal Law § 405.00

§ 405.00 Permits for public displays of fireworks

Effective: November 28, 2016

Currentness

1. Definition of "permit authority." The term "permit authority," as used in this section, means and includes the agency authorized to grant and issue the permits provided in this section. The permit authority on or within state property shall be the office of fire prevention and control. The permit authority for territory within a county park shall be the county park commission, or such other agency having jurisdiction, control and/or operation of the parks or parkways within which any fireworks are to be displayed. The permit authority in a city shall be the duly constituted licensing agency thereof and, in the absence of such agency, shall be an officer designated for the purpose by the legislative body thereof. The permit authority in a village shall be an officer designated for the purpose by the board of trustees thereof and the permit authority in the territory of a town outside of villages shall be an officer designated for the purpose by the town board thereof.

2. Permits for fireworks displays. Notwithstanding the provisions of section 270.00 of this chapter, the permit authority for state property, county parks, cities, villages, or towns may grant a permit for the display of fireworks to municipalities, fair associations, amusement parks, persons, or organizations of individuals that submit an application in writing. The application for such permit shall set forth:

(a) The name of the body sponsoring the display and the names of the persons actually to be in charge of the firing of the display who shall possess a valid certificate of competence as a pyrotechnician as required under the general business law and article sixteen of the labor law. The permit application shall further contain a verified statement from the applicant identifying the individuals who are authorized to fire the display including their certificate numbers, and that such individuals possess a valid certificate of competence as a pyrotechnician.

(b) The date and time of day at which the display is to be held.

(c) The exact location planned for the display.

(d) The number and kind of fireworks to be discharged.

(e) The manner and place of storage of such fireworks prior to the display.

(f) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways and other lines of communication, the lines behind which the audience will be restrained and the location of all nearby trees, telegraph or telephone lines or other overhead obstructions.

(g) Such other information as the permit authority may deem necessary to protect persons or property.

3. Applications for permits. All applications for permits for the display of fireworks shall be made at least five days in advance of the date of the display and the permit shall contain provisions that the actual point at which the fireworks are to be fired be in accordance with the rules promulgated by the commissioner of labor pursuant to section four hundred sixty-two of the labor law and that all the persons in actual charge of firing the fireworks shall be over the age of eighteen years, competent and physically fit for the task, that there shall be at least two such operators constantly on duty during the discharge and that at least two approved type fire extinguishers shall be kept at as widely separated points as possible within the actual area of the display. For any applications made for the display of fireworks on state property, the state fire administrator shall coordinate the issuance of such permits with the head of the police or fire department or both, where there are such departments. The legislative body of a county park, city, village or town may provide for approval of such permit by the head of the police or fire department or both where there are such departments. No permit granted and issued hereunder shall be transferable. After such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful solely therefor.

3-a. Notwithstanding the provisions of subdivision three of this section, no permit may be issued to conduct a display of fireworks upon any property where the boundary line of such property is less than five hundred yards from the boundary line of any property which is owned, leased or operated by any breeder as defined in subdivision four of section two hundred fifty-one of the racing, pari-mutuel wagering and breeding law.

4. Bonds. Before granting and issuing a permit for a display of fireworks as herein provided, the permit authority shall require an adequate bond from the applicant therefor, unless it is a state entity, county park, city, village or town, in a sum to be fixed by the permit authority, which, however, shall not be less than one million dollars, conditioned for the payment of all damages, which may be caused to a person or persons or to property, by reason of the display so permitted and arising from any acts of the permittee, his or her agents, employees, contractors or subcontractors. Such bond shall run to the state if the permit is granted for a display on state property, or to the county park, city, village or town in which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors or assigns of such person or persons or such owner or owners. The permit authority may accept, in lieu of such bond, an indemnity insurance policy with liability coverage and indemnity protection equivalent to the terms and conditions upon which such bond is predicated and for the purposes provided in this section.



5. Local ordinances superseded. (a) All local ordinances regulating or prohibiting the display of fireworks are hereby superseded by the provisions of this section. Every city, town or village shall have the power to enact ordinances or local laws regulating or prohibiting the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts.

(b) Further, no city or county shall be bound to include “sparkling device” in the definitions of “fireworks” and “dangerous fireworks” in section 270.00 of this chapter, if such city or county shall so authorize the exemption of “sparkling device” by law. If any such city or county so elects, it and such other local jurisdictions that lie within its geographical boundaries shall not enact any other local law that is inconsistent with the provisions of subparagraph (iv) of paragraph (c) of subdivision one of section 270.00 of this chapter, nor to regulate sparkling devices in a manner that is in conflict with the provisions of NFPA 1124, 2006 edition.

(c) Notwithstanding paragraph (b) of this subdivision, any city wholly contained within the county of Orange may enact a local law to include “sparkling device” within the definitions of “fireworks” and “dangerous fireworks” as defined in section 270.00 of this chapter, notwithstanding any local law enacted by such county that authorizes the exemption of “sparkling device” from such definition.

#### Credits

(L.1965, c. 1030. Amended L.1972, c. 661, § 9; L.2002, c. 151, § 1, eff. Oct. 21, 2002; L.2009, c. 57, pt. CC, § 21, eff. Oct. 4, 2009; L.2013, c. 127, § 2, eff. July 12, 2013; L.2014, c. 477, § 2, eff. Dec. 21, 2014; L.2016, c. 458, § 1, eff. Nov. 28, 2016.)

#### Editors' Notes

### SUPPLEMENTARY PRACTICE COMMENTARY

by William C. Donnino

On the addition of subdivision (5)(b) by the Laws of 2014, c. 477, *see* Supplementary Practice Commentary to Penal Law § 270.00.

### PRACTICE COMMENTARY

by William C. Donnino

Penal Law § 405.00 has long existed to authorize permits for the “public” display of fireworks, meaning in effect a display not inside a building. L. 1965, c. 1030. In 2003, a separate statute was enacted to authorize permits for “indoor” pyrotechnics. Penal Law § 405.10. L. 2003, c. 584. *See Practice Commentary to Penal Law § 405.10.*

Then in 2009, Penal Law § 405.00 was amended to repeal the word “public” as a modifier of “display” in the body of the statute. L. 2009, c. 57. The title of the section remained: “Permits for public display of fireworks.” More significantly, however, the legislation repealed the detailed requirements on where the outdoor public display of fireworks could take place [Penal Law § 405.00 former subdivision three], and substituted a requirement that the Commissioner of Labor enact rules on where the display of fireworks could take place.


In 2013, the definition of “permit authority,” set forth in Penal Law §§ 405.00(1) and 405.10(1)(n), was amended to centralize the “permit authority” for firework displays “on or within state property” in the Office of Fire Prevention and Control (OFPC). L. 2013, c. 127. According to the Legislative Memorandum: “OFPC has the requisite technical expertise and resources to. issue permits for the display of fireworks and use of pyrotechnics on state property to ensure that they are safely conducted in accordance with the Penal Law and the Fire Code. Further, establishing a single state agency with the expertise and responsibility to make these permitting decisions is not only more efficient, but will bring consistency to how these displays are conducted on state property.”

#### Notes of Decisions (16)

McKinney’s Penal Law § 405.00, NY PENAL § 405.00  
Current through L.2017, chapters 1 to 8.

End of Document

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 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated

Penal Law (Refs & Annos)

Chapter 40. Of the Consolidated Laws (Refs & Annos)

Part Three. Specific Offenses

Title P. Offenses Against Public Safety

Article 270. Other Offenses Relating to Public Safety

McKinney's Penal Law § 270.00

§ 270.00 Unlawfully dealing with fireworks and dangerous fireworks

Effective: December 21, 2014

Currentness

1. Definition of “fireworks” and “dangerous fireworks”. (a) The term “fireworks,” as used in this section, includes:

(i) display fireworks, which means fireworks devices in a finished state, exclusive of mere ornamentation, primarily intended for commercial displays which are designed to produce visible and/or audible effects by combustion, deflagration or detonation, including, but not limited to, salutes containing more than one hundred thirty milligrams (two grains) of explosive composition, aerial shells containing more than forty grams of chemical composition exclusive of lift charge, and other exhibition display items that exceed the limits of consumer fireworks contained in the American Pyrotechnic Association (APA) Standard 87-1, 2001 edition;

(ii) articles pyrotechnic, which means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use and which articles meet the weight limits for consumer fireworks but are not labeled as such and are classified by the United States department of transportation in 49 CFR 172.101 as UN0431;

(iii) special effects, which means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment;

(iv) consumer fireworks which are aerial in performance and are commonly referred to as sky rockets, bottle rockets, missile type rockets, helicopters, aerial spinners, roman candles, mines, shell devices, aerial shell kits, reloadables and audible ground devices which are commonly referred to as firecrackers and chasers, as well as metal wire handheld sparklers;

(v) any blank cartridge, blank cartridge pistol, or toy cannon in which explosives are used, firecrackers, or any preparation containing any explosive or inflammable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other explosives, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, or other device containing any explosive substance, other than sparkling devices as defined in subparagraph (vi) of this paragraph; and

(vi) "sparkling devices," as used in this section, includes:

(1) sparkling devices which are ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (an audible crackling-type effect is not considered to be a report). Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category. Types of devices in this category include:

(A) cylindrical fountain: cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that may be contained in a different shaped exterior such as a square, rectangle, cylinder or other shape but the interior tubes are cylindrical in shape. Upon ignition, a shower of colored sparks, and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle to be hand held (handle fountain). When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, and when tubes are securely attached to a base and the tubes are separated from each other on the base by a distance of at least half an inch (12.7 millimeters), a maximum total weight of five hundred grams of pyrotechnic composition shall be allowed.

(B) cone fountain: cardboard or heavy paper cone containing not more than fifty grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, as is outlined in this subparagraph.

(C) wooden sparkler/dipped stick: these devices consist of a wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to one hundred grams of pyrotechnic composition per item.

(2) novelties which do not require approval from the United States department of transportation and are not regulated as explosives, provided that they are manufactured and packaged as described below:

(A) party popper: small devices with paper or plastic exteriors that are actuated by means of friction (a string or trigger is typically pulled to actuate the device). They frequently resemble champagne bottles or toy pistols in shape. Upon activation, the device expels flame-resistant paper streamers, confetti, or other novelties and produces a small report. Devices may contain not more than sixteen milligrams (0.25 grains) of explosive composition, which is limited to potassium chlorate and

red phosphorus. These devices must be packaged in an inner packaging which contains a maximum of seventy-two devices.

(B) snapper: small, paper-wrapped devices containing not more than one milligram of silver fulminate coated on small bits of sand or gravel. When dropped, the device explodes, producing a small report. Snappers must be in inner packages not to exceed fifty devices each, and the inner packages must contain sawdust or a similar, impact-absorbing material.

(b) The term “dangerous fireworks” means any fireworks capable of causing serious physical injury and which are: firecrackers containing more than fifty milligrams of any explosive substance, torpedoes, skyrocketes and rockets including all devices which employ any combustible or explosive substance and which rise in the air during discharge, Roman candles, and bombs, provided, however, that in cities with a population of one million or more, the term “dangerous fireworks” shall also include sparklers more than ten inches in length or one-fourth of one inch in diameter, or chasers including all devices which dart or travel about the surface of the ground during discharge.

(c) “Fireworks” and “dangerous fireworks” shall not be deemed to include the following nor shall the purchase and use of any items listed below be subject to the provisions of section 61 of title 12 of the New York state codes, rules and regulations or section four hundred eighty, four hundred eighty-one, four hundred eighty-two or four hundred eighty-three of the general business law:

(i) flares of the type used by railroads or any warning lights commonly known as red flares, or marine distress signals of a type approved by the United States coast guard, or

(ii) toy pistols, toy canes, toy guns or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for use, and toy pistol paper caps which contain less than twenty-hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times, or

(iii) bank security devices which contain not more than fifty grams of any compound or substance or any combination thereof, together with an igniter not exceeding 0.2 gram, capable of producing a lachrymating and/or visible or audible effect, where such device is stored or used only by banks, national banking associations, trust companies, savings banks, savings and loan associations, industrial banks, or credit unions, or by any manufacturer, wholesaler, dealer, jobber or common carrier for such devices and where the total storage on any one premises does not exceed one hundred devices, or

(iv) except in cities with a population of one million or more, in those counties and cities that opt by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter, “fireworks” and “dangerous fireworks” shall not be deemed to include “sparkling devices” as defined in subparagraph (vi) of paragraph (a) of this subdivision.

2. Offense. (a) Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00 of this chapter:

(i) any person who shall offer or expose for sale, sell or furnish, any fireworks or dangerous fireworks is guilty of a class B misdemeanor;

(ii) any person who shall offer or expose for sale, sell or furnish any fireworks or dangerous fireworks valued at five hundred dollars or more shall be guilty of a class A misdemeanor;

(iii) any person who shall possess, use, explode or cause to explode any fireworks or dangerous fireworks is guilty of a violation;

(iv) any person who shall offer or expose for sale, sell or furnish, any dangerous fireworks, fireworks or sparkling devices to any person who is under the age of eighteen is guilty of a class A misdemeanor.

(b) A person who has previously been convicted of a violation of subparagraph (iv) of paragraph (a) of this subdivision within the preceding five years and who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen, shall be guilty of a class E felony.

(c) Possession of fireworks or dangerous fireworks valued at one hundred fifty dollars or more shall be a presumption that such fireworks were intended to be offered or exposed for sale.

3. Exceptions. (a) The provisions of this section shall not apply to:

(i) fireworks, dangerous fireworks, and sparkling devices while in possession of railroads, common or contract carriers, retailers, wholesalers, distributors, jobbers and transportation companies or transportation agencies for the purpose of transportation to points without the state, the shipment of which is not prohibited by interstate commerce commission regulations as formulated and published from time to time, unless they be held voluntarily by such railroads, common or contract carriers, retailers, wholesalers, distributors, jobbers and transportation agencies or transporting companies as warehousemen for delivery to points within the state;

(ii) signaling devices used by railroad companies or motor vehicles referred to in subdivision seventeen of section three hundred seventy-five of the vehicle and traffic law;

(iii) high explosives for blasting or similar purposes;

(iv) fireworks, dangerous fireworks and sparkling devices for the use thereof by the United States military, and departments of the state and federal government;

(v) the use, transportation and storage of fireworks, dangerous fireworks and sparkling devices and special effects materials in connection with the production of motion pictures, television programs, commercials, and all entertainment media recorded in any current or to be designed format when such use, transportation and storage has been appropriately permitted by the local governmental subdivision having jurisdiction.

(b) Nothing in this article shall be construed to prohibit:

(i) any manufacturer, wholesaler, retailer, dealer or jobber from manufacturing, possessing or selling at wholesale a sparkling device to municipalities, religious or civic organizations, fair associations, amusement parks, or other organizations authorized by the state to store, transport, possess and use or to individuals to store, transport, possess and use;

(ii) the sale or use of blank cartridges for a motion picture, television program, commercial and all entertainment media, or for signal purposes in athletic sports, or for dog trials or dog training;

(iii) the use, storage, transportation or sale or transfer for use of fireworks and sparkling devices in the preparation for or in connection with motion pictures, television programs, commercials, and all entertainment media recorded in any current or to be designed format when such use, transportation and storage has been appropriately permitted by the local governmental subdivision having jurisdiction;

(iv) the manufacture or sale of sparkling devices provided they are to be shipped directly out of such city and any such items are sold in accordance with the provisions of this article; or

(v) except in cities with a population of one million or more, possession of sparkling devices lawfully obtained in a jurisdiction that did opt by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter to exclude "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks", for the purpose of lawful use in another jurisdiction that did opt by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter to exclude "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks". The superintendent of state police shall annually publish a list of those jurisdictions that have opted by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter to exclude "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks".

4. Sales of ammunition not prohibited. Nothing contained in this section shall be construed to prevent, or interfere in any way with, the sale of ammunition for revolvers or pistols of any kind, or for rifles, shot guns, or other arms, belonging or which may belong to any persons whether as sporting or hunting weapons or for the purpose of protection to them in their homes, or, as they may go abroad; and manufacturers are authorized to continue to manufacture, and wholesalers and dealers to continue to deal in and freely to sell ammunition to all such persons for such purposes.

5. Notwithstanding the provisions of subdivision four of this section, it shall be unlawful for any dealer in firearms to sell any ammunition designed exclusively for use in a pistol or revolver to any person, not authorized to possess a pistol or revolver. The violation of this section shall constitute a class B misdemeanor.

#### Credits

(L.1965, c. 1030. Amended L.1967, c. 791, § 48; L.1969, c. 709, § 1; L.1975, c. 840, § 1; L.1978, c. 286, § 1; L.1986, c. 166, § 1; L.1997, c. 180, § 1, eff. Nov. 1, 1997; L.2014, c. 477, § 1, eff. Dec. 21, 2014.)

#### Editors' Notes

### SUPPLEMENTARY PRACTICE COMMENTARY

by William C. Donnino

In 2014, subdivisions one, two, and three of the instant section were repealed and reenacted in the same structural format, that is: subdivision one defining “fireworks” and “dangerous fireworks”; subdivision two defining the offenses related to the possession and sale of “fireworks” and “dangerous fireworks”; and subdivision three listing certain exemptions from criminal liability. Laws of 2014, c. 477.

There appeared to be a dual purpose for the legislation. The first was to redefine, in greater detail and presumed clarity, the definitions of “fireworks” and “dangerous fireworks” in order to enhance enforcement. Whether that goal was accomplished remains to be determined. The second, and perhaps more significant, purpose was to authorize the exemption of certain fireworks from the definition of prohibited “fireworks” and “dangerous fireworks.” *See* Legislative Memorandum.

Accordingly, subdivision one continues to define “fireworks” and “dangerous fireworks,” albeit with more detail than the repealed definitions, and with the exclusion of certain fireworks, designated “sparkling devices,” which had been included in the former definition. *See* Penal Law § 270.00(1)(b) and (c) and (3)(b)(v). The term “sparkling devices” is defined to include various types of “sparklers,” and in addition, certain “novelties,” such as a “party popper” and “snapper” [Penal Law § 270.00(1)(a)(vi)]. The exclusion of “sparkling devices,” however, does not apply in New York City, nor in any other city or county which does not “authorize the exemption of ‘sparkling device’ by law” [Penal Law §§ 270.00(1)(c)(iv) and 405.00(5)(b)].

In approving the legislation, the Governor noted: “I vetoed earlier versions of this bill, which would permit the possession and sale of certain fireworks in this state on the limited circumstances....This bill improves upon those bills by expressly banning the possession of these fireworks in New York City and by requiring municipalities outside of New York City to affirmatively enact a local law electing to be covered by this legislation”. 2014 Governor’s Approval Memorandum 12.

The Superintendent of State Police is required to publish annually a list of those jurisdictions which “have opted by local law,” to accept the exclusion of “sparkling devices” from the definitions of “fireworks” and “dangerous fireworks.” *See* Penal Law § 405.00(5)(b). That legislative scheme could result in a patchwork of New York



jurisdictions which do or do not permit the possession and sale of certain fireworks, and perhaps complicate enforcement in New York City and those jurisdictions that do not accept the exclusion of “sparkling devices.” See Penal Law § 270.00(3)(b)(v).

An inducement for a city or county to accept the exclusions is the expected revenue from the sales tax on the sale of “sparkling devices.” See Legislative Memorandum on the state and local fiscal implications.

In light of the legalization of “sparkling devices” in the applicable jurisdictions, the same legislation added Executive Law § 156-h to provide for “[r]egistration and fees for manufacturers, distributors, wholesalers, and retailers of sparkling devices.” In turn, General Business Law § 392-j was added to provide that sales of “sparkling devices” “shall be lawful only for business[es] registered by the state,” and a violation thereof “shall be deemed an offense” as defined in Penal Law § 270.00(2).

Subdivision two of the instant section defines an “offense” related to the possession and sale of “fireworks” and “dangerous fireworks” in the same way that those offenses were defined in the repealed subdivision two, subject to the following: First, given that the defined offenses utilize and incorporate the terms “fireworks” and “dangerous fireworks,” these offenses would not include “sparkling devices” in the jurisdictions where those exclusions apply. Second, regardless of whether a jurisdiction accepts the exclusion of “sparkling devices,” this subdivision was amended to prohibit the sale of “sparkling devices” to minors. Specifically, the offense of offering or exposing for sale, or selling or furnishing “dangerous fireworks” to a person under the age of 18 was expanded to include doing same with respect to “fireworks or sparkling devices.” Penal Law § 270.00(2)(iv).

The threshold monetary amount that triggers the presumption in subdivision two is increased from \$50 to \$150.

Subdivision three continues to define in more detail exceptions related to the use of otherwise prohibited fireworks in various occupations, the military, and in lawful transportation.

## **PRACTICE COMMENTARY**

by William C. Donnino

### **Definitions**

For this section, there are two defined terms: “fireworks,” and “dangerous fireworks” [Penal Law § 270.00(1)].

The inclusion of a “blank cartridge pistol” within the definition of “fireworks” has been held not unconstitutionally vague. *People v. Jackson*, 76 Misc.2d 872, 352 N.Y.S.2d 376 (County Court, Erie, 1974) *affirmed without opinion* 36 N.Y.2d 726, 367 N.Y.S.2d 975, 328 N.E.2d 487 (1975).

In 1978, the definition of “fireworks” was amended to exclude “bank security devices,” as defined and under the circumstances detailed in paragraph three of subdivision one. L.1978, c. 286. At the same time, the statute defining the offense of “unlawfully possessing noxious material” [Penal Law § 270.05] was amended to exclude such

devices from the operation of that statute. Consequently, the possession and sale of such devices under the circumstances detailed in these statutes is not criminal. The Legislative Memorandum in support of the legislation stated that New York State ranked second in the nation (after California) in the number of bank robberies reported to the FBI, and first in the dollar amount of funds taken from its banks. The Memorandum claimed that such devices had been effective elsewhere in the apprehension of robbers and in the recovery of stolen funds, and that their use had been proven to be safe.

The term “dangerous fireworks” was added in 1997. L.1997, c. 180. In creating the definition of “dangerous fireworks,” four items then listed in the definition of “fireworks” were transferred to the new definition of “dangerous fireworks” -- namely, torpedoes, skyrockets, Roman candles, and bombs -- and other items were added. The definition of “dangerous fireworks” has two parts. In the first part, “dangerous fireworks” is defined to be any fireworks “capable of causing serious physical injury”; in the second part, the definition specifies certain types of fireworks. Thus, to establish the elements of the definition, it would appear that there must be proof both of the specified type of fireworks and that such fireworks were capable of causing serious physical injury.

The creation of the “dangerous fireworks” category permitted the Legislature to prescribe penalties for their sale (including the offering or exposing for sale, or furnishing of such fireworks) that were higher than those prescribed for the comparable sale of other fireworks. The legislative rationale was:

“Current law does little to deter individuals from engaging in the potentially lucrative business of the illicit sale of fireworks and dangerous fireworks. The profits from the illegal sales of fireworks can be substantial. Under current law no distinction is made between sales based on the value of the fireworks sold. There is also no difference in statute between common fireworks and stronger, potentially lethal, dangerous fireworks. People are killed or maimed each year by fireworks sold illegally in New York.” Legislative Memorandum.

Model rocket engines have been held to not constitute fireworks. *People v. Bochter*, 63 Misc.2d 249, 311 N.Y.S.2d 186 (District Court, Suffolk County, 1970).

### **The Offenses**

The basic “unlawfully dealing with fireworks” offense makes it a violation to possess, use, explode or cause to explode any fireworks or dangerous fireworks.

The exposure for sale, offer to sell, sale or furnishing of any fireworks or dangerous fireworks is a class B misdemeanor. If the fireworks or dangerous fireworks are valued at \$500 or more, or the dangerous fireworks went to a person under 18 years of age, the crime is a class A misdemeanor. For the second offense of furnishing dangerous fireworks to a person under 18 years of age, committed within five years of a conviction for such offense, the law classifies the offense as an E felony.

Thus, the crime is not in possession, but in furnishing the fireworks or dangerous fireworks to another.

The possession of fireworks or dangerous fireworks valued at \$50 or more, gives rise to a rebuttable presumption that the fireworks were intended to be offered or exposed for sale.

There is an exemption for the sale of ammunition [Penal Law § 270.00(4)] that in 1969 was qualified by making it

**§ 270.00 Unlawfully dealing with fireworks and dangerous fireworks, NY PENAL § 270.00**

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a crime [Penal Law § 270.00(5)] for a “dealer in firearms” to sell ammunition for a pistol or revolver to anyone who was not authorized to possess such weapons. L.1969, c. 709. The term “dealer in firearms” was apparently intended to refer to the definition of that term in Penal Law § 265.00(9).

Those with a permit for fireworks [see Penal Law article 405] and those specified in subdivision three of the instant section are excused from liability for the stated actions. Among those who have been exempted from liability by subdivision three are carriers while possessing fireworks for transportation or warehousing. Legislation in 1986 continued the exemption, but only if the carrier was in possession of the fireworks for “transportation to points without the state.” L.1986, c. 166. The Legislative Memorandum in support of that law indicated that the law was designed to preclude New Yorkers who are not authorized to possess fireworks from ordering them from out-of-state sellers, perhaps through mail-order catalogs, and having them delivered to them in New York by common carriers.

Notes of Decisions (17)

McKinney’s Penal Law § 270.00, NY PENAL § 270.00

Current through L.2017, chapters 1 to 8.

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RESOLUTION NO.: 47 - 2016

OF

FEBRUARY 22, 2016

A RESOLUTION ADOPTING  
RULES OF ORDER AND PROCEDURE  
FOR THE COUNCIL OF THE CITY OF NEWBURGH  
FOR THE YEAR 2016

BE IT RESOLVED, that the Council of the City of Newburgh, New York adopts for use during the year 2016 the Rules of Conduct and Procedure: By Laws, a copy of which is attached hereto and made a part of this Resolution; and

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

I, Lorene Vitek, City Clerk of the City of Newburgh,  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held Feb. 23, 2016  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 23rd day of Feb. 20 16

Lorene Vitek  
City Clerk

City of Newburgh City Council  
Rules of Order and Procedure

**Rule I: General Rules of Procedure**

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

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

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

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

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

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

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

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

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

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

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

## **Rule II. Order of Business**

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

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

## **Rule III. Voting**

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

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

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

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

#### **Rule IV. Executive Session**

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

#### **Rule V. Participation of City Manager and Staff**

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

#### **Rule VI. Suspension of the Rules**

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

#### **Rule VII. Guidelines for Public Comment**

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

B. Speakers must adhere to the following guidelines:

1. Speakers must be recognized by the presiding officer.
2. Speakers must step to the front of the room.
3. Speakers must give their name, street name without number and organization, if any.
4. Speakers must limit their remarks to 3 minutes on a given topic. The City Clerk shall keep a record of the time and shall inform the presiding officer when the 3 minutes has expired.
5. Speakers may not yield any remaining time they may have to another speaker.

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

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

#### **Rule VIII. Use of Recording Equipment**

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

#### **Rule IX. Rules for Public Hearings**

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

- (a) Speakers shall sign-in with the Clerk in writing prior to the beginning of the hearing by providing their name, street name without number, and organization, if any. Individuals arriving after the commencement of the hearing shall be permitted to register upon arrival as long as the Chairperson has not closed the hearing.



- (b) The Presiding Officer shall recognize each speaker, in the order listed on the sign-in sheet, when the hearing is commenced. Speakers shall identify themselves, their street name and organization, if any, prior to the remarks.
- (c) Speakers must limit their remarks to five (5) minutes. Remarks shall be addressed only to the hearing issues. Speakers may not yield any remaining time they may have to another speaker. The City Clerk shall time speakers and advise the presiding officer when the time has expired.
- (d) All remarks shall be addressed to the Council as a body and not to any individual member thereof.
- (e) Speakers shall observe the commonly accepted rules of courtesy, decency, dignity and good taste. Any loud, boisterous individual shall be asked to leave by the Presiding Officer and may be removed at the request of the Presiding Officer, subject to appeal by motion to the Council. Speakers addressing issues outside the scope of the hearing shall be asked to cease their comments.
- (f) Interested parties may address the Council by written communication. The statements may be read at the hearing, but shall be provided to all Council members and entered in the minutes of the hearing by the City Clerk.
- (g) The City Clerk shall include in the minutes of the hearing the name, address and organization, if any, of each speaker, a summary of the remarks, and written statements submitted to the Council.

#### **Rule X. Work Sessions**

There shall be regular work sessions of the Council to be held each Thursday preceding a Monday evening Council meeting. The work sessions shall be held at 6:00 p.m. in City Hall, 83 Broadway, Third Floor Council Chambers, unless the Council by majority vote cancels or changes the time or place of such session. The Rules IV, V, VI, and VIII of the Rules of Order of the Council shall apply to all work sessions. Work Session items requiring the preparation of a resolution, ordinance or local law shall be submitted to the City Manager's office no later than close of business on Wednesday in the week before the work session. Discussion items for work sessions shall be submitted to the City Manager's office no later than noon on the Friday immediately preceding the work session. The 2016 Council Meeting schedule is attached to these Rules and Order of Proceedings.

#### **Rule XI. Robert's Rules of Order**

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

#### **Rule XII. Adoption of Ordinances**

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

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

Date Adopted: May 14, 2001

Amended: February 25, 2002 (Rule XII added)

January 10, 2014 (Rule IV)

February 22, 2016



# City of Newburgh

City Hall- 83 Broadway  
Newburgh, New York 12550  
Phone: 845-569-7301  
Facsimile: 845-569-7370

## 2016 Work Session and Council Meeting Schedule Page 1

Thursday, January 7	Work Session
Monday, January 11	Council Meeting
Thursday, January 21	Work Session
Monday, January 25	Council Meeting
Thursday, February 4	Work Session
Monday, February 8	Council Meeting
Thursday, February 18	Work Session
Monday, February 22	Council Meeting
Thursday, March 10	Work Session
Monday, March 14	Council Meeting
Thursday, March 24	Work Session
Monday, March 28	Council Meeting
Thursday, April 7	Work Session
Monday, April 11	Council Meeting
Thursday, April 21	Work Session
Monday, April 25	Council Meeting
Thursday, May 5	Work Session
Monday, May 9	Council Meeting
Thursday, May 19	Work Session
Monday, May 23	Council Meeting

# City of Newburgh

City Hall - 83 Broadway  
Newburgh, New York 12550

Phone: 845-569-7301  
Facsimile: 845-569-7370

## 2016 Work Session and Council Meeting Schedule Page 2

Thursday, June 9	Work Session
Monday, June 13	Council Meeting
Thursday, July 7	Work Session
Monday, July 11	Council Meeting
Thursday, August 4	Work Session
Monday, August 8	Council Meeting
Thursday, September 8	Work Session
Monday, September 12	Council Meeting
Thursday, September 22	Work Session
Monday, September 26	Council Meeting
Thursday, October 6	Work Session
Tuesday, October 11	Council Meeting
Thursday, October 20	Work Session
Monday, October 24	Council Meeting
Thursday, November 10	Work Session
Monday, November 14	Council Meeting
Thursday, November 24	Work Session (Thanksgiving Day)
Monday, November 28	Council Meeting
Thursday, December 8	Work Session
Monday, December 12	Council Meeting
Thursday, December 22	Work Session
Tuesday, December 27	Council Meeting

City of Newburgh, NY  
Tuesday, March 28, 2017

## Chapter C. Charter

### Article IV. City Council

#### § C4.01. Rules of order.

[Amended 5-5-1941 by L.L. No. 1-1941; 2-24-1947 by L.L. No. 1-1947; 12-26-1951 by L.L. No. 3-1951; 3-3-1952 by L.L. No. 2-1952; 12-22-1952 by L.L. No. 10-1952; 2-12-1980 by L.L. No. 1-1980; 1-24-1983 by L.L. No. 1-1983]

- A. The Council shall determine the rules of its own proceedings and be the judge of the election, returns and qualifications of its members. The Council may compel the attendance of absent members at any meeting properly called and may punish or expel a member for disorderly conduct or declare his seat vacant by reason of inexcusable absence, provided that such absence has continued for four consecutive regular meetings, but no expulsion shall take place and no vacancy on account of absence shall be declared until the delinquent member has had an opportunity to be heard in his defense.
- B. Except as in this section especially regulated, the legislative powers of the Council may be exercised as provided by rules or ordinances adopted by it.
- C. Each member of the Council shall have the right to vote on any question coming before it. A majority of the Council shall constitute a quorum, and the affirmative vote of a majority of all the members of the Council shall be necessary to adopt any motion, resolution or ordinance.
- D. Regular meetings of the Council shall be held on the second and fourth Mondays of each month, except the months of June, July and August. Regular meetings of the Council shall be held on the second Mondays of June, July and August. If a regular meeting falls on a legal holiday, the meeting shall be held on the day following such legal holiday. All regular meetings shall be held at the time and place fixed by ordinance or resolution of the Council. Special meetings may be called by any member of the Council on three days' notice, which notice shall specify the object of the meeting. All legislative sessions shall be open to the public, and every matter coming before the Council for disposition shall be put to a vote whereon the ayes and nays shall be called and recorded. A full and accurate journal of the proceedings of the Council shall be kept by the City Clerk, which journal shall be open to the inspection of any elector of the City at any reasonable time.
- E. The Council may change the date, time or place of any regular or special meeting provided for in Subsection **D** of this section or may cancel such meeting either by resolution passed at the immediately preceding regular or special meeting or by consent of the Council at any time prior to the scheduled meeting.
- F. An emergency meeting may be called on less than three days' notice by the City Manager or a majority of the City Council upon reasonable notice, which notice shall specify the object of the meeting.

[Added 12-11-1995 by L.L. No. 4-1995]

City of Newburgh, NY  
Tuesday, March 28, 2017

## Chapter 20. Council, City

### § 20-3. Order of business.

[Amended 11-8-1999 by Ord. No. 13-99<sup>[1]</sup>]

The business of the Council shall be conducted in the following order:

- A. Roll call.
- B. Approval of minutes of previous meeting.
- C. Communications.
- D. Public hearings.
- E. Public comments regarding report of City Manager and items of old business and new business.
- F. Comments from the Council.
- G. Report of City Manager.
- H. Old business.
- I. New business.
- J. Public comments regarding general matters of City business.
- K. Further comments from the Council.

[1] *Editor's Note: This ordinance provided that it would take effect at the next City Council meeting subsequent to its adoption.*

RESOLUTION NO.: \_\_\_\_\_-2017

OF

APRIL 6, 2017

**A RESOLUTION RE-APPOINTING DEBORAH DRESSER AND GAIL FULTON AND  
APPOINTING \_\_\_\_\_ TO THE  
CONSERVATION ADVISORY COUNCIL FOR TWO YEAR TERMS**

**WHEREAS**, the City Council of the City of Newburgh adopted Local Law No. 1-2013 of August 19, 2013 which added new Chapter 159 of the City Code of Ordinances entitled "Conservation Advisory Council"; and

**WHEREAS**, Chapter 159 provides for a seven-member Conservation Advisory Council, the members of which are appointed for terms of two years; and

**WHEREAS**, the two-year terms of Deborah Dresser, Gail Fulton and Philip Prinzivalli expired on November 30, 2016 and Ms. Dresser and Ms. Fulton wish to continue to serve new two-year terms and \_\_\_\_\_ wishes to be appointed to serve as a new member; 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 following individuals be and are hereby re-appointed to the Conservation Advisory Council for a two (2) year term commencing December 1, 2016 and ending on November 30, 2018; and

Deborah Dresser  
Gail Fulton

Letter of intent

Gail Fulton  
35 Cerone Pl, Apt 307  
Newburgh, NY 12550

February 3, 2017

To: Mayor Kennedy and members of the City Council

Cc: Michael Ciaravino, City Manager

Michelle Kelson, Corporation Counsel

Chuck Thomas, chair, CAC

Re: Intent to continue serving on the Conservation Advisory Council

I have served as a member of the CAC beginning with the two year vacancy. It is my intent to be appointed for a full term beginning this year 2017.

Gail Fulton



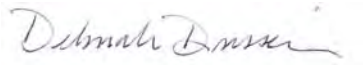
Deborah Dresser  
12 Bay View Terrace  
Newburgh, New York 12550

January 25, 2017

To: Mayor Kennedy and Members of the City Council  
Cc: Michael Ciaravino, City Manager  
Michelle Kelson, corporation Counsel  
Chuck Thomas, Chair, CAC

Re: Intent to continue serving on the Conservation Advisory Council

I have served as a member of the CAC beginning with the one year vacancy—Mary McTamane's resignation—and then in a full 3 year term, which expired on November 30, 2016. It is my intent to be appointed for a second full term beginning this year, 2017.

A handwritten signature in cursive script, appearing to read "Deborah Dresser", written in dark ink on a light background.

# **CITY OF NEWBURGH**

## **CYBER/ELECTRONIC AND TELEPHONIC COMMUNICATIONS POLICY**

### **PREAMBLE AND PURPOSE**

THE CITY OF NEWBURGH ("CITY") ELECTRONIC COMMUNICATIONS SYSTEMS, INCLUDING ~~COMPUTER~~ELECTRONIC DEVICES, E-MAIL AND THE INTERNET, AND THE CITY'S TELEPHONIC COMMUNICATIONS SYSTEMS ARE ESSENTIAL TO THE PROFESSIONAL CONDUCT OF CITY BUSINESS. CITY EMPLOYEES, VOLUNTEERS AND AGENTS HAVE A LEGAL AND ETHICAL OBLIGATION TO USE SUCH SYSTEMS IN A PRODUCTIVE AND RESPONSIBLE MANNER. IT IS IMPERATIVE THAT CITY EMPLOYEES READ AND UNDERSTAND THE CITY POLICY WITH RESPECT TO ELECTRONIC AND TELEPHONIC COMMUNICATIONS AND ADHERE TO IT. EMPLOYEES WHO VIOLATE THIS POLICY ARE SUBJECT TO POTENTIAL DISCIPLINARY ACTION, SUBJECT TO APPLICABLE LAWS AND COLLECTIVE BARGAINING AGREEMENTS, UP TO AND INCLUDING TERMINATION. THIS POLICY IS NOT INTENDED TO NOR SHALL IT MODIFY OR AFFECT IN ANY MANNER ANY PROCEDURES, POLICIES, USAGES OR OTHER OFFICIAL OPERATION OF ANY EMERGENCY COMMUNICATIONS SYSTEMS OR DEVICES USED BY ANY CITY EMERGENCY RESPONSE AGENCY. IN THE CARRYING OUT OF OFFICIAL DUTIES, NO EMPLOYEE HAS OR SHALL EXPECT PRIVACY WITH RESPECT TO ANY USAGE OF SUCH CITY SYSTEMS. ACCESSING PERSONAL DATABASES, ACCOUNTS OR OTHER CONTACTS UNRELATED TO CONDUCTING THE BUSINESS OF THE CITY, IS PROHIBITED.

#### **1. DEFINITIONS.**

**CITY** -- As used herein and unless otherwise specified shall mean the City of Newburgh, New York.

**BUSINESS USE** -- City-provided ~~computer~~electronic devices~~-systems~~ that allow access to the Internet and electronic communication systems are the property of the City and are provided to facilitate the effective and efficient conduct of City business. Users are permitted access to the Internet and electronic communication systems to assist in the performance of their jobs. Each agency or department of the City shall follow this policy setting forth with specificity the work-related purposes for which such equipment and access are provided.

**ELECTRONIC COMMUNICATION SYSTEMS** -- System used as a means of sending and receiving messages electronically ~~-through connected computer systems or the Internet, such as~~including but not limited to e-mail, text messages, instant messages, multimedia messages or voice mail.

**ELECTRONIC DEVICE** -- Includes televisions, DVD players, laptops, desktop computers, mobile phones, iPods, iPads, cameras, printers and radios. An electronic device is a device that

accomplishes its purpose electronically. Electronic devices include mobile devices as further defined in this Policy.

EMPLOYEE -- An officer, official, employee, agent, contractor or volunteer working for the City of Newburgh.

INTERNET -- An international network of independent computer systems. The World Wide Web is one of the most recognized means of using the Internet.

INTRANET -- A network of City-owned computer systems and electronic devices accessible only to City employees.

MOBILE DEVICE -- A type of Electronic Device that has at least one network connection interface, non-removable and/or removable storage, and is portable, including but not limited to smartphones, Personal Digital Assistants (PDAs), tablets, laptops, smart watches and wearable devices.

PERSONAL USE -- Personal use means use that is not job-related. Personal use is prohibited if it:

- interferes with the user's productivity or work performance or with any other employee's productivity or work performance;
- adversely affects the efficient operation of the electronic device or~~computer~~ system;
- violates any provision of this policy, any supplemental policy adopted by the agency supplying the Internet or electronic communication systems, or any other policy, regulation, law or guideline as set forth by local, State or Federal law.

PORTABLE STORAGE DEVICE -- A storage device that is capable of being physically transported, including but not limited to USB/flash drives/thumb drives, external hard drives, tapes, CDs, DVDs and cameras.

TELECOMMUNICATIONS SYSTEM(S); COMPUTER/ELECTRONIC NETWORK -- One or more ~~computers~~electronic devices that can store, provide access to, transmit, receive and/or share information, typically connected by cable, data line, or satellite link, including personal computers ("pc's," ) ~~portable~~mobile devices, including but not limited to iPads and other tablets, laptop computers, personal data assistants (PDAs), word-processors or any other type or kind of device connected to or used in conjunction with the telecommunications or telephone systems of the City of Newburgh, including but not limited to any telephone or computer equipment or electronic device, phone cards, copiers, facsimiles, printers, modems, projectors, audio and video equipment and other such devices and equipment; which are owned, leased, rented, borrowed or otherwise in the possession or use of or by the City of Newburgh.

TELEPHONE SYSTEM; TELEPHONE COMMUNICATIONS -- Two or more telephones or telephone-like devices employed by employees, volunteers and agents of the City of Newburgh to communicate and transmit information.

USERS -- All employees and agents of the City who use a City agency's telephonic or computer and/or other electronic communication systems and electronic and mobile devices.

NOTE: Agencies which give consultants, contract personnel or other non-employees such as

volunteers or interns access to the agency's telephonic or computer or other electronic communication systems shall require such individuals to abide by this policy.

## **2. PERSONAL USE OF CITY PROPERTY, FACILITIES AND EQUIPMENT PROHIBITED.**

a. All electronic and telephonic communication systems and all communications and information transmitted by, received from, or stored in these systems are the property of the City and, as such, are to be used solely for City-related purposes. The use of any software and business equipment, including, but not limited to, the City's e-mail system, City's intranet, the Internet, telecopiers, ~~computers~~electronic devices, facsimiles, modems, telephones, mobile devices~~cell phones/Personal Digital Assistants~~, and copy machines for private purposes is prohibited.

b. Employees using City property, electronic devices or equipment for personal purposes do so at their own risk. Employees are not permitted to use a password, code, access a file or retrieve any stored communication unless authorized to do so or unless they have received prior clearance from the City Manager and their department head after approval from the Information Systems Manager. Elected Officials need only obtain permission from the Information Systems Manager. All passwords are City property and must not be shared with any unauthorized person. The Information Systems Manager shall establish passwords and encryptions keys for exclusive use of elected officials to which only she/he shall have access. No employee may use a pass code or voice-mail access code that has not been issued or approved by the City, or that is unknown to the City. City business may be conducted using only City electronic devices, mobile devices~~computers~~ and equipment. Use of any other electronic devices or mobile devices~~computer~~ requires **written** consent of the Information Systems Manager and the authorized Department Head. Elected officials need only obtain permission from the Information Systems Manager.

c. Privacy Expectations: City employees do not have a right, nor should they have an expectation, of privacy while using City-provided electronic devices and mobile devices at any time, including accessing the City's Intranet, Internet and using e-mail and voice communications. To the extent that Elected Officials and employees wish that their private activities remain private, they should avoid using the City-provided electronic device or mobile device for personal use. By acceptance of the City-provided electronic device, employees provide their consent to disclosing and/or monitoring of device usage, including the contents of any files or information maintained or passed-through that device subject to the City's collective bargaining obligations, and avoid connecting personal devices to the City's internet/intranet systems. By use of a City-provided electronic device, Elected Officials are expected to comply with the City's Cyber/Electronic Telephone Communication Policy rules for acceptable use of such electronic devices as set forth in paragraphs 2, 3, 6 and 7 of this Policy. The IT Manager may access the electronic devices issued to Elected Officials to determine compliance with this policy and to comply with Freedom of Information Law requests and legitimate discovery requests arising out of administrative, civil, or criminal proceedings.

## **3. IMPROPER E-MAIL AND INTRANET/INTERNET USE PROHIBITED**

a. Improper use of the City's e-mail system and any other electronic and telephonic communication, including the [Intranet](#)/Internet, is prohibited. Examples of improper conduct include, but are not limited to:

- Transmitting offensive images, offensive jokes or remarks.
- Transmitting messages that can reasonably be interpreted as threatening, intimidating, coercive, discriminatory or harassing.
- Requesting dates and/or sexual favors, or making personal or sexual remarks to others or transmitting same.
- Any use that can reasonably be interpreted as demeaning, defamatory or abusive of any individual or group.
- Any use which would violate or tend to violate the privacy rights of any individual.
- Any use which is or may tend to be in violation of any licensing or other contract or agreement pertaining thereto binding the City.
- Any use that is disruptive or offensive to others or creates, encourages or permits a hostile work environment.
- Any use involving obscene, pornographic or prurient material.
- Any use promoting or advancing the interests of any candidate for public office or any political organization.
- Any use during which the user remains anonymous or uses a false or misleading name or identity.
- Any use which promotes or advances a private commercial business or interest.
- Any private or personal use of hardware or software which is the property of the City, on City premises or elsewhere.
- Any use that is fraudulent, illegal or contrary to City policies, or leads to liability or harms or would tend to harm the status, stature or image of the City, or would tend to or does expose the City to legal liability or penalty; or to significant or unusual or unnecessary costs or expenses.

4. **RIGHTS OF CITY CONCERNING USE OF CITY FACILITIES, ~~AND~~ EQUIPMENT, [ELECTRONIC DEVICES AND DATA](#).**

a. To ensure that the use of electronic and telephonic communications systems and City property and/or equipment is consistent with the City's legitimate business interests,

authorized representatives of the City may monitor the use of such equipment from time to time. This includes monitoring Intranet/Internet usage of any kind. This may also include listening to stored voice-mail messages and the ability to conduct GPS monitoring with electronic devices subject to the City's collective bargaining obligations.

b. The City reserves the right, at any time and for any purpose, to monitor, review, audit, intercept, access, delete, use and disclose all files, documents, telephonic messages, e-mail messages, sites, messaging systems, chat rooms, blogs, news outlets or other communications, created, received, sent or stored over the telephone, e-mail ~~or~~ computer or other electronic systems of the City. Employees should understand that personal passwords, access codes, and hard disk drives should not be used; and do not in any manner alter these City rights, nor do they create any employee privacy rights or expectations. The City may monitor employee use of City equipment at any time at its discretion, with or without notice to the employee subject to its collective bargaining obligations. Employees should further understand that deleting or erasing material from the system might not in fact remove the material from the system.

c. Employees may not share or disclose ~~their~~ passwords issued or provided by the City or used by the City to any unauthorized person or use ~~their~~such passwords for any unauthorized purpose.

d. The City owns any data used or created during working hours and working time and/or using City-owned electronic devices and equipment and on any personal electronic device or equipment when used for work-related tasks. Data may not be removed from the workplace and/or stored on personal electronic devices without the express written permission of the department head, Information Systems Manager and the City Manager. Copying data includes any replication of data, taking photographs or any other electronically displayed information.

## **5. CITY'S RIGHT TO AMEND ITS POLICY AND RULES.**

The City may adopt and revise this policy and rules appertaining thereto as it may deem appropriate and necessary from time to time, as authorized by law. The City will adequately post revisions, but it is the user's responsibility to ensure that his/her use of the City of Newburgh computing and communication resources conforms to current policy.

## **6. SPECIAL INTERNET AND E-MAIL CONSIDERATIONS**

- a. (i) The City provides access to the Internet to some of its employees based upon the responsibilities of their position. The Internet represents a useful tool for the City in conducting its business, but like any other tool, it must be used properly. For purposes of this policy, the Internet includes any public electronic data communications network.
- (ii) Internet e-mail offers similar capabilities to other e-mail systems, except that correspondents may be external to the City. External e-mail messages may carry one or more attachments. An attachment may be any kind of ~~computer~~data file, such as a word processing document, spreadsheet, software program, or graphic image.



- (iii) Just as the City has an official Internet web site, so do other organizations. Most public web sites are “read only,” meaning that they permit a person who visits the site to read material posted on the Web site but not to leave a message. Other web sites permit visitors to establish continuing contact by leaving a message (the electronic equivalent of leaving your business card or a telephone message). The owner or operator of a private web site may record the information that a connection was made from the City. This can have important consequences to the City.
- b.
  - (i) Any and all use of the Internet and/or e-mail may be conducted solely in accordance with the terms and conditions of this Policy and Rules.
- c.
  - (i) No Violation of Copyright. Many of the materials on the Internet are protected by copyright. Even though they may seem to be freely accessible, many of the intellectual property laws which apply to print media still apply to software and material published on the Internet. Employees are permitted to print out web pages and to download material from the Internet for informational purposes as long as the purpose for such copying is directly related to City business and as long as such copying falls into the category of “fair use” which is the term used to describe a legal standard defining what the law does and does not allow. Copying or disseminating material that is copyrighted is prohibited. Employees having any questions regarding such materials should contact the Corporation Counsel for guidance in advance of such copying.
  - (ii) There are Federal and State laws which protect the rights of persons who originate creative works. Such works can include writings, artwork, graphics, humor, music and so on. Any employee using such material without the permission of the owner may be in violation of such laws and may expose themselves and the City to liability. Such use, which would tend to or would result in a violation of the copyright, patent, trademark or any other laws, rules or regulations of the United States or of the State of New York; or would tend to or would expose the City to liability for same, is prohibited.
  - (iii) As a general rule, employees may not forward, distribute, copy, re-publish, [download, upload elsewhere](#) or incorporate into another work, material retrieved from a web site or other external system. Very limited or “fair use” may be permitted by law in certain circumstances. Any employee desiring to reproduce or store the contents of a screen or Web site should contact the Corporation Counsel to ascertain whether the intended use is permissible.
- d. Use of the [Internet and/or](#) World Wide Web includes all restrictions, which apply generally to the use of the City’s e-mail and other electronic [devices](#) and telephonic equipment, as noted above. In addition, the following rules apply with respect to Internet usage:

- (i) No Downloading of Non-Business Related Data. The City does not allow the download of files from the Internet. However, if a need to download files arises, ~~you~~an employee must receive prior permission from both his/her~~your~~ department head and from the City Information Systems Manager. Elected Officials need only obtain permission from the Information Systems Manager.
- (ii) No Downloading of Application Programs. The City does not permit the download or installation on City ~~computer~~electronic devices or mobile devices of application software from the Internet. The City does not permit the downloading of any program or information which may infiltrate, damage, alter, interfere with or otherwise harm the proper functioning of City systems; or which is unrelated to the conduct of City business. Such software may not only contain embedded viruses, but also is untested and may interfere with the functioning of standard City applications.
- (iii) No Participation in Web-based Surveys without Authorization. When using the Internet with City equipment during the employee(s) workday, the user implicitly involves the City in his/her expression. Therefore, users should not participate in web or e-mail based surveys, interviews or chat rooms without authorization or permission of the department head.
- (iv) No use of Subscription-based Services without Prior Approval. Some Internet sites require that users subscribe before being able to use them. Users should not subscribe to such services without the authorization of their department head and the City Manager after approval from the Information Systems Manager. Elected Officials need only obtain permission from the Information Systems Manager.
- (v) Remote Access to any systems of the City. Remote access to any systems of the City without proper advance authorization by the Information Systems Manager and the department head is prohibited. Elected officials may request remote access to their City systems and accounts from the Information Systems Manager.

## **7. SECURITY PRECAUTIONS.**

- a. The Information Systems Manager has overall responsibility for establishing the security standards for City-issued electronic and mobile devices. The Information Systems Manager will:
  - (i) Procure all City of Newburgh-owned electronic and mobile devices for City of Newburgh issuance and approve the types of personally owned devices that will be used.
  - (ii) Assure that City of Newburgh issued electronic and mobile devices are available for staff members with job functions that are mission critical to City of Newburgh operations, or that protect the safety and security of City of Newburgh staff.



- (iii) Provide for the distribution, operation, and administrative support of issued electronic and mobile devices.
- (iv) Maintain an inventory of City of Newburgh electronic and mobile devices by serial number, user's office, user's name, and service start/end dates.
- (v) Maintain an inventory of licenses for City of Newburgh owned software installed on each City of Newburgh-owned electronic and mobile device.
- (vi) Establish and maintain security configurations for all City-issued electronic and mobile devices, including patching and upgrading of software/firmware.
- (vii) Establish a timetable for replacement of obsolete City-issued electronic devices and equipment and mobile devices.
- (viii) Establish security standards for electronic devices issued to the elected officials to maintain separate email and electronic device accounts and passwords for each elected official which cannot be linked or otherwise shared with other elected officials or employees.

b. To increase security, users shall take all necessary and appropriate measures to protect all City systems, electronic devices and equipment and the data and information which is stored therein and accessed and used thereby. Such measures shall include but not be limited to the following:

- (i) Users should log off of computer or electronic systems or take other appropriate precautions when ~~their computers~~ electronic devices are not in use for a significant period of time.
- (ii) Passwords and user accounts must not be "shared" with any unauthorized individual. Passwords may not be saved in websites or associated keychains, on system hard drives, on personal devices or any other non-approved location.
- (iii) All anti-virus and other protective measures shall be employed at all times that City systems are in use.
- (iv) Careless, reckless, malicious or intentional damage to City systems is prohibited.
- (v) Any violations by employees and non-employee of any provision or part of this policy shall be reported immediately to the department head and the City Manager.

b.c. Rules for Use of Personal Computers, Mobile Devices and other Electronic Devices. City employees, agents and volunteers, **SHALL NOT:**

- (i) Load software (screen savers, tutorials, application software, hardware, freeware, open-source software, etc.) without prior written approval from your department head AND from the City's Information Systems Manager.
- (ii) Copy, download, lend or allow unauthorized use of or access to software owned and/or licensed for use by the City.

- (iii) Use, attach, load, apply, install or otherwise introduce into City systems personally owned and/or licensed software and/or hardware, including USB drives, mobile phones and devices and other personal equipment.
- (iv) Install hardware or hardware drivers; and **SHALL NOT** relocate computer equipment or electronic device or swap equipment from one ~~PC~~electronic device to another.
- (v) Exchange, or themselves take or allow others to take computer equipment, electronic devices, ~~disks~~ portable storage devices, software or any other City-owned property off of City premises or move or remove any City property without permission of the department head or City Manager. Requests to use any City-owned equipment or materials off-site must be made in writing and must be approved in advance by both the department head and the Information Systems Manager. Elected officials may remove portable electronic devices and portable storage devices from City premises as needed for the performance of their official duties.
- (vi) Act such as to accept and use or allow others the acceptance and use of computer hardware or software from other sources without the advance written authorization from the department head and the Information Systems Manager.
- (vii) Turn off anti-virus protection or change settings pertaining thereto.
- (viii) Change system settings (Network Neighborhood, Device Setup, E-mail Server options, Control Panel Regional Settings, etc.) or modify (delete or rename) system ~~icons~~files/programs/shortcuts (My Computer, Network Neighborhood, Microsoft Word, etc.) from the main desktop screen.
- (ix) Act so as to use or allow others the use of e-mail and Internet browsing for other than City business.
- (x) Download from the Internet or open e-mail attachments that are “.exe” files unless the source, sender and/or originator has been properly verified.
- (xi) Use the Internet inquiry/download for inappropriate content.
- (xii) Use media, such as ~~CDs or diskettes~~portable storage devices, unless they have been checked for viruses by authorized and qualified City staff. Portable storage devices will be scanned automatically for viruses upon connection to City computers and electronic devices.
- (xiii) Share electronic device or mobile device~~computer~~ passwords or access codes with any unauthorized person(s) at any time. Electronic device or mobile device~~Computer~~ passwords are not to be stored or posted in any publicly accessible area nor kept among private office possessions in a manner that could lead to their exposure even with substantial effort and ingenuity. Information concerning or to the effect that any unauthorized person(s) know a password or

access code(s) or other confidential information must be reported to the department head and to the City Manager immediately. Elected officials need only report unauthorized access to passwords and/or other confidential information to the Information Systems Manager. The City may require periodic changes of passwords at its discretion.

- (xiv) Fail to check any and all ~~floppy diskettes~~ portable storage devices or other media devices inserted into a computer or other electronic device for viruses. All users are required to notify the City's Information Systems Manager, the department head and the City Manager immediately if a virus is detected.
- (xv) Use or access any internet radio, television or other similar media station for any reason unrelated to city business or purposes.
- (xvi) Use any instant messaging client(s) or services, such as but not limited to AOL Instant Messenger, Yahoo Messenger, MSN Messenger, Google Talk, Google Hangouts, iMessage or others, unless prior written permission has been given therefore by both the department head and ~~e~~City Manager.
- (xvii) Use any free or promotional internet web-mail sites unless prior written approval is granted therefore by both the department head and the City Manager.
- (xviii) Obtain prior authorization of the Information Systems Manager, department head and City Manager to alter or delete systems files.

~~ed~~. All City employees, agents and volunteers shall abide by the following:

- (i) ~~(i)~~ All authorized work-related data files (documents, spreadsheets, etc.) must be saved on the server (F: drive, G: drive or Z: drive) folders and not on the PC, mobile device, portable device or other electronic equipment. Storing files on the ~~PC~~ electronic device and/or hard drives is done at risk. It is not the responsibility of Information Services to restore this information if there is an electronic device, mobile device, portable device or PC failure.
- (ii) Abide by the applicable New York State law governing the use of mobile devices and/or smartphones while driving.
- ~~(i)~~ (iii) City electronic devices and/or equipment during non-working hours and may be used for work-related purposes in accordance with the other terms and conditions of this policy.

~~de~~. Rules for Electronic Mail (E-mail & Internet):

- ~~a~~ (i) The City's e-mail systems are City-owned property and are intended to be used for official City business only. All messages sent or received via e-mail are City property. It is against City policy to use e-mail for any unlawful endeavor.
- (ii) Employer Rights -- The City reserves and intends to exercise the right to access and disclose contents of e-mail messages for any purpose, including but not limited to:

- Finding lost messages
- Providing assistance when an employee is out of the office or otherwise unavailable
- Evaluating the effectiveness of electronic mail
- Complying with an investigation into suspected unlawful acts
- Recovering from system failures or other emergencies
- Investigating suspected breaches of security or violation of City policies.

ee.f. Usage Guidelines – All users shall exercise restraint when sending very large files, and shall not unnecessarily or inappropriately send messages to a large number of recipients, thereby wasting City network resources.

df.g. When the City grants an employee an e-mail account, it is the responsibility of the employee to adhere to the following guidelines:

- (i) E-mail messages must not involve personal sales or solicitation; must not be associated with any outside business activity; and must not ~~potentially embarrass the City or~~ violate any other City policy or department rules and regulations.
- (ii) Chain letters and/or messages are prohibited and may be illegal and must not be transmitted through City e-mail at any time.
- (iii) Region-Wide E-mail Messages -- E-mail sent to all members on a “Global Address List” generates a heavy burden on the computer systems and network that have to route and store them. In many cases global messages interrupt the work of a substantial number of people. All Global Address e-mail must be approved by the department head before it is sent.

eg.h. Reporting of Security Violations: Any ~~employee~~individual suspected of unauthorized use of e-mail should be reported immediately to the department head and to the City Manager.

hi. Reporting Technical Issues: Technical assistance and support is handled by the City’s IT Department. Employees will report technical issues affecting electronic devices and equipment including device malfunctions and loss of data, within one (1) hour or as soon as practical after discovering a technical issue, device malfunction or data loss to the IT Helpdesk by calling 569-7345 or by emailing [ithelpdesk@cityofnewburgh-ny.gov](mailto:ithelpdesk@cityofnewburgh-ny.gov). Employees will request assistance with electronic devices, equipment and data from the IT Helpdesk by calling 569-7345 or by emailing [ithelpdesk@cityofnewburgh-ny.gov](mailto:ithelpdesk@cityofnewburgh-ny.gov).

ij. The City expects employees to protect their City-issued electronic devices and equipment from theft, damage, abuse and unauthorized use. Lost or stolen electronic devices or equipment shall be reported to the employee’s department head, the IT Helpdesk by calling (845) 569-7345 or emailing [ithelpdesk@cityofnewburgh-ny.gov](mailto:ithelpdesk@cityofnewburgh-ny.gov) and the Information Systems Manager within one (1) hour or as soon as practicable after the employee discovers the electronic device or equipment is missing. The Information Systems Manager will lock and

disable the electronic device upon notification. A lost or stolen electronic device will be replaced a maximum of three times, subject to availability of electronic devices and funding. The City may discipline an employee or may seek reimbursement from the employee for the cost of the replacement of lost or stolen electronic device or equipment as permitted under this Policy and pursuant to applicable laws, rules, regulations and collective bargaining agreements.

**8. COMPLIANCE (ENFORCEMENT FOR VIOLATION(S)):**

a. Any violation(s) of this policy may result in potential disciplinary action, subject to applicable laws and collective bargaining agreements, under pursuant to the City's Employee Disciplinary Policy up to and including termination. Other potential ~~ssible~~ disciplineary actions ~~might be~~ may include but are not limited to:

- (i) Verbal and/or written counseling.
- (ii) ~~PE~~Electronic devices will be "locked down" to run only authorized standard software or other limitations on ~~computer~~electronic device use.
- (iii) Internet/Intranet access will be denied if improperly used.
- (iv) E-mail privileges may be revoked.

b. As a condition of employment and continued employment, employees are required to sign an "Electronic Communications and Telephone Communications Acknowledgment Form" attached to this policy and available from the City Manager's Office. New employees are required to sign this form on their first day of City employment.

c. Upon separation from the City, all employees are required to return all electronic devices and equipment issued by the City. The Information Systems Manager is responsible for the maintenance, protection or deletion of data contained on returned electronic devices and equipment. The Information Systems Manager is responsible for re-setting usernames and passwords. An employee's final paycheck will be held until all electronic devices and equipment are returned.

**9. INTERPRETATION AND INTEGRATION**

a. The City Manager, with the advice and in consultation with the Information Systems Manager and the Corporation Counsel, shall be responsible for official interpretation of this policy. Questions regarding the application of this policy should be directed to the Corporation Counsel.

b. This law and the policies, rules, terms and conditions hereof shall be interpreted and applied as provided under the laws of the United States and of the State of New York.

c. Should any part or portion of this policy be ruled invalid by any court or agency of competent jurisdiction, the remainder shall remain in full force and effect, as the sense thereof may permit.

d. Notwithstanding the above, nothing contained in this policy will supersede any relevant and/or applicable provision of any collective bargaining agreement to which the City is a party.

**Acknowledgment to be signed by employee; user's responsibility.**

I acknowledge that I have received a written copy of the Cyber/Electronic and Telephonic Communications Policy for the City of Newburgh. I understand the terms of this policy and agree to abide by them. I realize that the City of Newburgh security software may record and store for management use the electronic e-mail messages I send and receive, the Internet address of any site that I visit and any network activity in which I transmit or receive any type of file. I understand that any violation of this policy could lead to my dismissal from employment or even criminal prosecution.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date

**CYBER/ELECTRONIC AND TELEPHONIC COMMUNICATIONS  
EMPLOYEE ACKNOWLEDGMENT FORM**

I have read the City's "Cyber/Electronic and Telephonic Communications" policy and understand that I may bring any questions I have about the policy to my department head. I understand that any violation of the policy will subject me to potential disciplinary action, subject to applicable laws and collective bargaining agreements, up to and including termination.

I understand that all electronic communication systems and all information transmitted by, received from, or stored in these systems are the property of the City. I also understand that these systems, including the Internet, are to be used solely for job-related purposes and not for personal purposes, and that I have no expectation of privacy in connection with the use of the equipment or with the transmission, receipt, or storage of information in the equipment. I also understand the City strictly forbids using these systems for any unlawful purpose, including discrimination and/or harassment. I understand that I may not act in such manner as may intentionally, recklessly or carelessly cause harm or damage to City systems.

I agree not to use a password, code, access a file, or retrieve any stored communication unless authorized. I acknowledge and consent to the City monitoring my use of its devices and



equipment, as well as personal devices and equipment to the extent that they use the City's intranet/internet, at any time at its discretion. Such monitoring may include printing and reading all e-mail entering, leaving, or stored in these systems, and listening to my voicemail messages in the ordinary course of business.

I understand that any violations of these rules, regulations and standards may be a violation of City policy, or of ethics, or of law, I agree to comply with these rules, regulations, standards and policy, should I commit, or allow another to commit, any such violation, my privileges to use and access such systems may be restricted or revoked; and/or I may be subject to discipline up to and including termination; in addition to such other penalty as may be applicable under law, including but not limited to compensating and/or indemnifying the City for damages or loss.

_____ Name of Employee (Print Name)	_____ Name of Witness (Print Name)
_____ Employee's Signature	_____ Signature of Witness
_____ Date	_____ Date

\*\*\*\*\*  
\*\*\*\*\*  
**PLEASE RETURN THIS FORM TO THE CITY CLERK AFTER SIGNING**  
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# **CITY OF NEWBURGH**

## **CYBER/ELECTRONIC AND TELEPHONIC COMMUNICATIONS POLICY**

### **PREAMBLE AND PURPOSE**

THE CITY OF NEWBURGH ("CITY") ELECTRONIC COMMUNICATIONS SYSTEMS, INCLUDING ELECTRONIC DEVICES, E-MAIL AND THE INTERNET, AND THE CITY'S TELEPHONIC COMMUNICATIONS SYSTEMS ARE ESSENTIAL TO THE PROFESSIONAL CONDUCT OF CITY BUSINESS. CITY EMPLOYEES, VOLUNTEERS AND AGENTS HAVE A LEGAL AND ETHICAL OBLIGATION TO USE SUCH SYSTEMS IN A PRODUCTIVE AND RESPONSIBLE MANNER. IT IS IMPERATIVE THAT CITY EMPLOYEES READ AND UNDERSTAND THE CITY POLICY WITH RESPECT TO ELECTRONIC AND TELEPHONIC COMMUNICATIONS AND ADHERE TO IT. EMPLOYEES WHO VIOLATE THIS POLICY ARE SUBJECT TO POTENTIAL DISCIPLINARY ACTION, SUBJECT TO APPLICABLE LAWS AND COLLECTIVE BARGAINING AGREEMENTS, UP TO AND INCLUDING TERMINATION. THIS POLICY IS NOT INTENDED TO NOR SHALL IT MODIFY OR AFFECT IN ANY MANNER ANY PROCEDURES, POLICIES, USAGES OR OTHER OFFICIAL OPERATION OF ANY EMERGENCY COMMUNICATIONS SYSTEMS OR DEVICES USED BY ANY CITY EMERGENCY RESPONSE AGENCY. IN THE CARRYING OUT OF OFFICIAL DUTIES, NO EMPLOYEE HAS OR SHALL EXPECT PRIVACY WITH RESPECT TO ANY USAGE OF SUCH CITY SYSTEMS. ACCESSING PERSONAL DATABASES, ACCOUNTS OR OTHER CONTACTS UNRELATED TO CONDUCTING THE BUSINESS OF THE CITY, IS PROHIBITED.

#### **1. DEFINITIONS.**

**CITY** -- As used herein and unless otherwise specified shall mean the City of Newburgh, New York.

**BUSINESS USE** -- City-provided electronic devices that allow access to the Internet and electronic communication systems are the property of the City and are provided to facilitate the effective and efficient conduct of City business. Users are permitted access to the Internet and electronic communication systems to assist in the performance of their jobs. Each agency or department of the City shall follow this policy setting forth with specificity the work-related purposes for which such equipment and access are provided.

**ELECTRONIC COMMUNICATION SYSTEMS** -- System used as a means of sending and receiving messages electronically, including but not limited to e-mail, text messages, instant messages, multimedia messages or voice mail.

**ELECTRONIC DEVICE** -- Includes televisions, DVD players, laptops, desktop computers, mobile phones, iPods, iPads, cameras, printers and radios. An electronic device is a device that accomplishes its purpose electronically. Electronic devices include mobile devices as further defined in this Policy.



**EMPLOYEE** -- An officer, official, employee, agent, contractor or volunteer working for the City of Newburgh.

**INTERNET** -- An international network of independent computer systems. The World Wide Web is one of the most recognized means of using the Internet.

**INTRANET** -- A network of City-owned computer systems and electronic devices accessible only to City employees.

**MOBILE DEVICE** -- A type of Electronic Device that has at least one network connection interface, non-removable and/or removable storage, and is portable, including but not limited to smartphones, Personal Digital Assistants (PDAs), tablets, laptops, smart watches and wearable devices.

**PERSONAL USE** -- Personal use means use that is not job-related. Personal use is prohibited if it:

- interferes with the user's productivity or work performance or with any other employee's productivity or work performance;
- adversely affects the efficient operation of the electronic device or system;
- violates any provision of this policy, any supplemental policy adopted by the agency supplying the Internet or electronic communication systems, or any other policy, regulation, law or guideline as set forth by local, State or Federal law.

**PORTABLE STORAGE DEVICE** -- A storage device that is capable of being physically transported, including but not limited to USB/flash drives/thumb drives, external hard drives, tapes, CDs, DVDs and cameras.

**TELECOMMUNICATIONS SYSTEM(S); COMPUTER/ELECTRONIC NETWORK** -- One or more electronic devices that can store, provide access to, transmit, receive and/or share information, typically connected by cable, data line, or satellite link, including personal computers ("pc's,") mobile devices, including but not limited to iPads and other tablets, laptop computers, personal data assistants (PDAs), word-processors or any other type or kind of device connected to or used in conjunction with the telecommunications or telephone systems of the City of Newburgh, including but not limited to any telephone or computer equipment or electronic device, phone cards, copiers, facsimiles, printers, modems, projectors, audio and video equipment and other such devices and equipment; which are owned, leased, rented, borrowed or otherwise in the possession or use of or by the City of Newburgh.

**TELEPHONE SYSTEM; TELEPHONE COMMUNICATIONS** Two or more telephones or telephone-like devices employed by employees, volunteers and agents of the City of Newburgh to communicate and transmit information.

**USERS** -- All employees and agents of the City who use a City agency's telephonic or computer and/or other electronic communication systems and electronic and mobile devices.  
**NOTE:** Agencies which give consultants, contract personnel or other non-employees such as volunteers or interns access to the agency's telephonic or computer or other electronic communication systems shall require such individuals to abide by this policy.

## **2. PERSONAL USE OF CITY PROPERTY, FACILITIES AND EQUIPMENT PROHIBITED.**

a. All electronic and telephonic communication systems and all communications and information transmitted by, received from, or stored in these systems are the property of the City and, as such, are to be used solely for City-related purposes. The use of any software and business equipment, including, but not limited to, the City's e-mail system, City's intranet, the Internet, telecopiers, electronic devices, facsimiles, modems, telephones, mobile devices, and copy machines for private purposes is prohibited.

b. Employees using City property, electronic devices or equipment for personal purposes do so at their own risk. Employees are not permitted to use a password, code, access a file or retrieve any stored communication unless authorized to do so or unless they have received prior clearance from the City Manager and their department head after approval from the Information Systems Manager. Elected Officials need only obtain permission from the Information Systems Manager. All passwords are City property and must not be shared with any unauthorized person. The Information Systems Manager shall establish passwords and encryptions keys for exclusive use of elected officials to which only she/he shall have access. No employee may use a pass code or voice-mail access code that has not been issued or approved by the City, or that is unknown to the City. City business may be conducted using only City electronic devices, mobile devices and equipment. Use of any other electronic devices or mobile devices requires **written** consent of the Information Systems Manager and the authorized Department Head. Elected officials need only obtain permission from the Information Systems Manager.

c. Privacy Expectations: City employees do not have a right, nor should they have an expectation, of privacy while using City-provided electronic devices and mobile devices at any time, including accessing the City's Intranet, Internet and using e-mail and voice communications. To the extent that Elected Officials and employees wish that their private activities remain private, they should avoid using the City-provided electronic device or mobile device for personal use. By acceptance of the City-provided electronic device, employees provide their consent to disclosing and/or monitoring of device usage, including the contents of any files or information maintained or passed-through that device subject to the City's collective bargaining obligations, and avoid connecting personal devices to the City's internet/intranet systems. By use of a City-provided electronic device, Elected Officials are expected to comply with the City's Cyber/Electronic Telephone Communication Policy rules for acceptable use of such electronic devices as set forth in paragraphs 2, 3, 6 and 7 of this Policy. The IT Manager may access the electronic devices issued to Elected Officials to determine compliance with this policy and to comply with Freedom of Information Law requests and legitimate discovery requests arising out of administrative, civil, or criminal proceedings.

## **3. IMPROPER E-MAIL AND INTRANET/INTERNET USE PROHIBITED**

a. Improper use of the City's e-mail system and any other electronic and telephonic communication, including the Intranet/Internet, is prohibited. Examples of improper conduct include, but are not limited to:

- Transmitting offensive images, offensive jokes or remarks.
- Transmitting messages that can reasonably be interpreted as threatening, intimidating, coercive, discriminatory or harassing.
- Requesting dates and/or sexual favors, or making personal or sexual remarks to others or transmitting same.
- Any use that can reasonably be interpreted as demeaning, defamatory or abusive of any individual or group.
- Any use which would violate or tend to violate the privacy rights of any individual.
- Any use which is or may tend to be in violation of any licensing or other contract or agreement pertaining thereto binding the City.
- Any use that is disruptive or offensive to others or creates, encourages or permits a hostile work environment.
- Any use involving obscene, pornographic or prurient material.
- Any use promoting or advancing the interests of any candidate for public office or any political organization.
- Any use during which the user remains anonymous or uses a false or misleading name or identity.
- Any use which promotes or advances a private commercial business or interest.
- Any private or personal use of hardware or software which is the property of the City, on City premises or elsewhere.
- Any use that is fraudulent, illegal or contrary to City policies, or leads to liability or harms or would tend to harm the status, stature or image of the City, or would tend to or does expose the City to legal liability or penalty; or to significant or unusual or unnecessary costs or expenses.

**4. RIGHTS OF CITY CONCERNING USE OF CITY FACILITIES, EQUIPMENT, ELECTRONIC DEVICES AND DATA.**

a. To ensure that the use of electronic and telephonic communications systems and City property and/or equipment is consistent with the City's legitimate business interests, authorized representatives of the City may monitor the use of such equipment from time to time. This includes monitoring Intranet/Internet usage of any kind. This may also include

listening to stored voice-mail messages and the ability to conduct GPS monitoring with electronic devices subject to the City's collective bargaining obligations.

b. The City reserves the right, at any time and for any purpose, to monitor, review, audit, intercept, access, delete, use and disclose all files, documents, telephonic messages, e-mail messages, sites, messaging systems, chat rooms, blogs, news outlets or other communications, created, received, sent or stored over the telephone, e-mail computer or other electronic systems of the City. Employees should understand that personal passwords, access codes, and hard disk drives should not be used; and do not in any manner alter these City rights, nor do they create any employee privacy rights or expectations. The City may monitor employee use of City equipment at any time at its discretion, with or without notice to the employee subject to its collective bargaining obligations. Employees should further understand that deleting or erasing material from the system might not in fact remove the material from the system.

c. Employees may not share or disclose passwords issued or provided by the City or used by the City to any unauthorized person or use such passwords for any unauthorized purpose.

d. The City owns any data used or created during working hours and working time and/or using City-owned electronic devices and equipment and on any personal electronic device or equipment when used for work-related tasks. Data may not be removed from the workplace and/or stored on personal electronic devices without the express written permission of the department head, Information Systems Manager and the City Manager. Copying data includes any replication of data, taking photographs or any other electronically displayed information.

## **5. CITY'S RIGHT TO AMEND ITS POLICY AND RULES.**

The City may adopt and revise this policy and rules appertaining thereto as it may deem appropriate and necessary from time to time, as authorized by law. The City will adequately post revisions, but it is the user's responsibility to ensure that his/her use of the City of Newburgh computing and communication resources conforms to current policy.

## **6. SPECIAL INTERNET AND E-MAIL CONSIDERATIONS**

- a. (i) The City provides access to the Internet to some of its employees based upon the responsibilities of their position. The Internet represents a useful tool for the City in conducting its business, but like any other tool, it must be used properly. For purposes of this policy, the Internet includes any public electronic data communications network.
- (ii) Internet e-mail offers similar capabilities to other e-mail systems, except that correspondents may be external to the City. External e-mail messages may carry one or more attachments. An attachment may be any kind of data file, such as a word processing document, spreadsheet, software program, or graphic image.
- (iii) Just as the City has an official Internet web site, so do other organizations. Most public web sites are "read only," meaning that they permit a person who visits

the site to read material posted on the Web site but not to leave a message. Other web sites permit visitors to establish continuing contact by leaving a message (the electronic equivalent of leaving your business card or a telephone message). The owner or operator of a private web site may record the information that a connection was made from the City. This can have important consequences to the City.

- b. (i) Any and all use of the Internet and/or e-mail may be conducted solely in accordance with the terms and conditions of this Policy and Rules.
- c. (i) No Violation of Copyright. Many of the materials on the Internet are protected by copyright. Even though they may seem to be freely accessible, many of the intellectual property laws which apply to print media still apply to software and material published on the Internet. Employees are permitted to print out web pages and to download material from the Internet for informational purposes as long as the purpose for such copying is directly related to City business and as long as such copying falls into the category of "fair use" which is the term used to describe a legal standard defining what the law does and does not allow. Copying or disseminating material that is copyrighted is prohibited. Employees having any questions regarding such materials should contact the Corporation Counsel for guidance in advance of such copying.
  - (ii) There are Federal and State laws which protect the rights of persons who originate creative works. Such works can include writings, artwork, graphics, humor, music and so on. Any employee using such material without the permission of the owner may be in violation of such laws and may expose themselves and the City to liability. Such use, which would tend to or would result in a violation of the copyright, patent, trademark or any other laws, rules or regulations of the United States or of the State of New York; or would tend to or would expose the City to liability for same, is prohibited.
  - (iii) As a general rule, employees may not forward, distribute, copy, re-publish, download, upload elsewhere or incorporate into another work, material retrieved from a web site or other external system. Very limited or "fair use" may be permitted by law in certain circumstances. Any employee desiring to reproduce or store the contents of a screen or Web site should contact the Corporation Counsel to ascertain whether the intended use is permissible.
- d. Use of the Internet and/or World Wide Web includes all restrictions, which apply generally to the use of the City's e-mail and other electronic devices and telephonic equipment, as noted above. In addition, the following rules apply with respect to Internet usage:
  - (i) No Downloading of Non-Business Related Data. The City does not allow the download of files from the Internet. However, if a need to download files arises, an employee must receive prior permission from both his/her department head

and from the City Information Systems Manager. Elected Officials need only obtain permission from the Information Systems Manager.

- (ii) No Downloading of Application Programs. The City does not permit the download or installation on City electronic devices or mobile devices of application software from the Internet. The City does not permit the downloading of any program or information which may infiltrate, damage, alter, interfere with or otherwise harm the proper functioning of City systems; or which is unrelated to the conduct of City business. Such software may not only contain embedded viruses, but also is untested and may interfere with the functioning of standard City applications.
- (iii) No Participation in Web-based Surveys without Authorization. When using the Internet with City equipment during the employee(s) workday, the user implicitly involves the City in his/her expression. Therefore, users should not participate in web or e-mail based surveys, interviews or chat rooms without authorization or permission of the department head.
- (iv) No use of Subscription-based Services without Prior Approval. Some Internet sites require that users subscribe before being able to use them. Users should not subscribe to such services without the authorization of their department head and the City Manager after approval from the Information Systems Manager. Elected Officials need only obtain permission from the Information Systems Manager.
- (v) Remote Access to any systems of the City. Remote access to any systems of the City without proper advance authorization by the Information Systems Manager and the department head is prohibited. Elected officials may request remote access to their City systems and accounts from the Information Systems Manager.

## **7. SECURITY PRECAUTIONS.**

a. The Information Systems Manager has overall responsibility for establishing the security standards for City-issued electronic and mobile devices. The Information Systems Manager will:

- (i) Procure all City of Newburgh-owned electronic and mobile devices for City of Newburgh issuance and approve the types of personally owned devices that will be used.
- (ii) Assure that City of Newburgh issued electronic and mobile devices are available for staff members with job functions that are mission critical to City of Newburgh operations, or that protect the safety and security of City of Newburgh staff.
- (iii) Provide for the distribution, operation, and administrative support of issued electronic and mobile devices.
- (iv) Maintain an inventory of City of Newburgh electronic and mobile devices by serial number, user's office, user's name, and service start/end dates.

- (v) Maintain an inventory of licenses for City of Newburgh owned software installed on each City of Newburgh-owned electronic and mobile device.
- (vi) Establish and maintain security configurations for all City-issued electronic and mobile devices, including patching and upgrading of software/firmware.
- (vii) Establish a timetable for replacement of obsolete City-issued electronic devices and equipment and mobile devices.
- (viii) Establish security standards for electronic devices issued to the elected officials to maintain separate email and electronic device accounts and passwords for each elected official which cannot be linked or otherwise shared with other elected officials or employees.

b. To increase security, users shall take all necessary and appropriate measures to protect all City systems, electronic devices and equipment and the data and information which is stored therein and accessed and used thereby. Such measures shall include but not be limited to the following:

- (i) Users should log off of computer or electronic systems or take other appropriate precautions when electronic devices are not in use for a significant period of time.
- (ii) Passwords and user accounts must not be “shared” with any unauthorized individual. Passwords may not be saved in websites or associated keychains, on system hard drives, on personal devices or any other non-approved location.
- (iii) All anti-virus and other protective measures shall be employed at all times that City systems are in use.
- (iv) Careless, reckless, malicious or intentional damage to City systems is prohibited.
- (v) Any violations by employees and non-employee of any provision or part of this policy shall be reported immediately to the department head and the City Manager.

c. Rules for Use of Personal Computers, Mobile Devices and other Electronic Devices. City employees, agents and volunteers, **SHALL NOT:**

- (i) Load software (screen savers, tutorials, application software, hardware, freeware, open-source software, etc.) without prior written approval from your department head AND from the City’s Information Systems Manager.
- (ii) Copy, download, lend or allow unauthorized use of or access to software owned and/or licensed for use by the City.
- (iii) Use, attach, load, apply, install or otherwise introduce into City systems personally owned and/or licensed software and/or hardware, including USB drives, mobile phones and devices and other personal equipment.

- (iv) Install hardware or hardware drivers; and **SHALL NOT** relocate computer equipment or electronic device or swap equipment from one electronic device to another.
- (v) Exchange, or themselves take or allow others to take computer equipment, electronic devices, portable storage devices, software or any other City-owned property off of City premises or move or remove any City property without permission of the department head or City Manager. Requests to use any City-owned equipment or materials off-site must be made in writing and must be approved in advance by both the department head and the Information Systems Manager. Elected officials may remove portable electronic devices and portable storage devices from City premises as needed for the performance of their official duties.
- (vi) Act such as to accept and use or allow others the acceptance and use of computer hardware or software from other sources without the advance written authorization from the department head and the Information Systems Manager.
- (vii) Turn off anti-virus protection or change settings pertaining thereto.
- (viii) Change system settings (Network Neighborhood, Device Setup, E-mail Server options, Control Panel Regional Settings, etc.) or modify (delete or rename) system files/programs/shortcuts (My Computer, Network Neighborhood, Microsoft Word, etc.) from the main desktop screen.
- (ix) Act so as to use or allow others the use of e-mail and Internet browsing for other than City business.
- (x) Download from the Internet or open e-mail attachments that are “.exe” files unless the source, sender and/or originator has been properly verified.
- (xi) Use the Internet inquiry/download for inappropriate content.
- (xii) Use media, such as portable storage devices, unless they have been checked for viruses by authorized and qualified City staff. Portable storage devices will be scanned automatically for viruses upon connection to City computers and electronic devices.
- (xiii) Share electronic device or mobile device passwords or access codes with any unauthorized person(s) at any time. Electronic device or mobile device passwords are not to be stored or posted in any publicly accessible area nor kept among private office possessions in a manner that could lead to their exposure even with substantial effort and ingenuity. Information concerning or to the effect that any unauthorized person(s) know a password or access code(s) or other confidential information must be reported to the department head and to the City Manager immediately. Elected officials need only report unauthorized access to passwords and/or other confidential information to the Information



Systems Manager. The City may require periodic changes of passwords at its discretion.

- (xiv) Fail to check any and all portable storage devices or other media devices inserted into a computer or other electronic device for viruses. All users are required to notify the City's Information Systems Manager, the department head and the City Manager immediately if a virus is detected.
- (xv) Use or access any internet radio, television or other similar media station for any reason unrelated to city business or purposes.
- (xvi) Use any instant messaging client(s) or services, such as but not limited to AOL Instant Messenger, Yahoo Messenger, MSN Messenger, Google Talk, Google Hangouts, iMessage or others, unless prior written permission has been given therefore by both the department head and City Manager.
- (xvii) Use any free or promotional internet web-mail sites unless prior written approval is granted therefore by both the department head and the City Manager.
- (xviii) Obtain prior authorization of the Information Systems Manager, department head and City Manager to alter or delete systems files.

d. All City employees, agents and volunteers shall abide by the following:

- (i) All authorized work-related data files (documents, spreadsheets, etc.) must be saved on the server (F: drive, G: drive or Z: drive) folders and not on the PC, mobile device, portable device or other electronic equipment. Storing files on the electronic device and/or hard drives is done at risk. It is not the responsibility of Information Services to restore this information if there is an electronic device, mobile device, portable device or PC failure.
- (ii) Abide by the applicable New York State law governing the use of mobile devices and/or smartphones while driving.
- (iii) City electronic devices and/or equipment during non-working hours and may be used for work-related purposes in accordance with the other terms and conditions of this policy.

e. Rules for Electronic Mail (E-mail & Internet):

- (i) The City's e-mail systems are City-owned property and are intended to be used for official City business only. All messages sent or received via e-mail are City property. It is against City policy to use e-mail for any unlawful endeavor.
- (ii) Employer Rights -- The City reserves and intends to exercise the right to access and disclose contents of e-mail messages for any purpose, including but not limited to:
  - Finding lost messages

- Providing assistance when an employee is out of the office or otherwise unavailable
- Evaluating the effectiveness of electronic mail
- Complying with an investigation into suspected unlawful acts
- Recovering from system failures or other emergencies
- Investigating suspected breaches of security or violation of City policies.

f. **Usage Guidelines** -- All users shall exercise restraint when sending very large files, and shall not unnecessarily or inappropriately send messages to a large number of recipients, thereby wasting City network resources.

g. When the City grants an employee an e-mail account, it is the responsibility of the employee to adhere to the following guidelines:

- (i) E-mail messages must not involve personal sales or solicitation; must not be associated with any outside business activity; and must not violate any other City policy or department rules and regulations.
- (ii) Chain letters and/or messages are prohibited and may be illegal and must not be transmitted through City e-mail at any time.
- (iii) **Region-Wide E-mail Messages** -- E-mail sent to all members on a "Global Address List" generates a heavy burden on the computer systems and network that have to route and store them. In many cases global messages interrupt the work of a substantial number of people. All Global Address e-mail must be approved by the department head before it is sent.

h. **Reporting of Security Violations:** Any individual suspected of unauthorized use of e-mail should be reported immediately to the department head and to the City Manager.

i. **Reporting Technical Issues:** Technical assistance and support is handled by the City's IT Department. Employees will report technical issues affecting electronic devices and equipment including device malfunctions and loss of data, within one (1) hour or as soon as practical after discovering a technical issue, device malfunction or data loss to the IT Helpdesk by calling 569-7345 or by emailing [ithelpdesk@cityofnewburgh-ny.gov](mailto:ithelpdesk@cityofnewburgh-ny.gov). Employees will request assistance with electronic devices, equipment and data from the IT Helpdesk by calling 569-7345 or by emailing [ithelpdesk@cityofnewburgh-ny.gov](mailto:ithelpdesk@cityofnewburgh-ny.gov).

j. The City expects employees to protect their City-issued electronic devices and equipment from theft, damage, abuse and unauthorized use. Lost or stolen electronic devices or equipment shall be reported to the employee's department head, the IT Helpdesk by calling (845) 569-7345 or emailing [ithelpdesk@cityofnewburgh-ny.gov](mailto:ithelpdesk@cityofnewburgh-ny.gov) and the Information Systems Manager within one (1) hour or as soon as practicable after the employee discovers the electronic device or equipment is missing. The Information Systems Manager will lock and disable the electronic device upon notification. A lost or stolen electronic device will be replaced a maximum of three times, subject to availability of electronic devices and funding. The City may discipline an employee or may seek reimbursement from the employee for the

cost of the replacement of lost or stolen electronic device or equipment as permitted under this Policy and pursuant to applicable laws, rules, regulations and collective bargaining agreements.

**8. COMPLIANCE (ENFORCEMENT FOR VIOLATION(S)):**

a. Any violation(s) of this policy may result in potential disciplinary action, subject to applicable laws and collective bargaining agreements, pursuant to the City's Employee Disciplinary Policy up to and including termination. Other potential disciplinary actions may include but are not limited to:

- (i) Verbal and/or written counseling.
- (ii) Electronic devices will be "locked down" to run only authorized standard software or other limitations on electronic device use.
- (iii) Internet/Intranet access will be denied if improperly used.
- (iv) E-mail privileges may be revoked.

b. As a condition of employment and continued employment, employees are required to sign an "Electronic Communications and Telephone Communications Acknowledgment Form" attached to this policy and available from the City Manager's Office. New employees are required to sign this form on their first day of City employment.

c. Upon separation from the City, all employees are required to return all electronic devices and equipment issued by the City. The Information Systems Manager is responsible for the maintenance, protection or deletion of data contained on returned electronic devices and equipment. The Information Systems Manager is responsible for re-setting usernames and passwords. An employee's final paycheck will be held until all electronic devices and equipment are returned.

**9. INTERPRETATION AND INTEGRATION**

a. The City Manager, with the advice and in consultation with the Information Systems Manager and the Corporation Counsel, shall be responsible for official interpretation of this policy. Questions regarding the application of this policy should be directed to the Corporation Counsel.

b. This law and the policies, rules, terms and conditions hereof shall be interpreted and applied as provided under the laws of the United States and of the State of New York.

c. Should any part or portion of this policy be ruled invalid by any court or agency of competent jurisdiction, the remainder shall remain in full force and effect, as the sense thereof may permit.

d. Notwithstanding the above, nothing contained in this policy will supersede any relevant and/or applicable provision of any collective bargaining agreement to which the City is a party.

**Acknowledgment to be signed by employee; user's responsibility.**

I acknowledge that I have received a written copy of the Cyber/Electronic and Telephonic Communications Policy for the City of Newburgh. I understand the terms of this policy and agree to abide by them. I realize that the City of Newburgh security software may record and store for management use the electronic e-mail messages I send and receive, the Internet address of any site that I visit and any network activity in which I transmit or receive any type of file. I understand that any violation of this policy could lead to my dismissal from employment or even criminal prosecution.

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Signature

---

Name (Printed)

---

Date

**CYBER/ELECTRONIC AND TELEPHONIC COMMUNICATIONS**  
**EMPLOYEE ACKNOWLEDGMENT FORM**

I have read the City's "Cyber/Electronic and Telephonic Communications" policy and understand that I may bring any questions I have about the policy to my department head. I understand that any violation of the policy will subject me to potential disciplinary action, subject to applicable laws and collective bargaining agreements, up to and including termination.

I understand that all electronic communication systems and all information transmitted by, received from, or stored in these systems are the property of the City. I also understand that these systems, including the Internet, are to be used solely for job-related purposes and not for personal purposes, and that I have no expectation of privacy in connection with the use of the equipment or with the transmission, receipt, or storage of information in the equipment. I also understand the City strictly forbids using these systems for any unlawful purpose, including discrimination and/or harassment. I understand that I may not act in such manner as may intentionally, recklessly or carelessly cause harm or damage to City systems.

I agree not to use a password, code, access a file, or retrieve any stored communication unless authorized. I acknowledge and consent to the City monitoring my use of its devices and equipment, as well as personal devices and equipment to the extent that they use the City's intranet/internet, at any time at its discretion. Such monitoring may include printing and

reading all e-mail entering, leaving, or stored in these systems, and listening to my voicemail messages in the ordinary course of business.

I understand that any violations of these rules, regulations and standards may be a violation of City policy, or of ethics, or of law, I agree to comply with these rules, regulations, standards and policy, should I commit, or allow another to commit, any such violation, my privileges to use and access such systems may be restricted or revoked; and/or I may be subject to discipline up to and including termination; in addition to such other penalty as may be applicable under law, including but not limited to compensating and/or indemnifying the City for damages or loss.

_____ Name of Employee (Print Name)	_____ Name of Witness (Print Name)
_____ Employee's Signature	_____ Signature of Witness
_____ Date	_____ Date

\*\*\*\*\*  
\*\*\*\*\*  
**PLEASE RETURN THIS FORM TO THE CITY CLERK AFTER SIGNING**  
\*\*\*\*\*  
\*\*\*\*\*

RESOLUTION NO.: 225 - 2011

received  
12/17/15

OF

NOVEMBER 14, 2011

A RESOLUTION ADOPTING THE CITY OF NEWBURGH  
CYBER/ELECTRONIC AND TELEPHONIC COMMUNICATIONS POLICY

BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby adopts the City of Newburgh Cyber/Electronic and Telephonic Communications Policy, a copy of which is attached hereto and made a part of this Resolution; and

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

Councilman Dillard suggested that we pass this tonight but also make it a continuing process. As recommended by Ms. Ribble, we should also look at what the State has in place.

Mayor Valentine said that this would be the start because it is the recommendation of risk management.

Corporation Counsel, Michelle Kelson said that it is important to have a policy in place and we will take the comments and suggestions back to our Risk Management Committee and develop amendments and further policies that will be brought back to the Council for approval.

Councilwoman Bell asked when that might happen.

Corporation Counsel, Michelle Kelson, said that the Safety Committee meets once a month but we have a group that has been working on particular policies so they might be able to have something for the Council at the next meeting in November or December.

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

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

ADOPTED

**CITY OF NEWBURGH**  
**CYBER/ELECTRONIC AND TELEPHONIC**  
**COMMUNICATIONS POLICY**

**PREAMBLE AND PURPOSE**

THE CITY OF NEWBURGH ("CITY") ELECTRONIC COMMUNICATIONS SYSTEMS, INCLUDING COMPUTERS, E-MAIL AND THE INTERNET, AND THE CITY'S TELEPHONIC COMMUNICATIONS SYSTEMS ARE ESSENTIAL TO THE PROFESSIONAL CONDUCT OF CITY BUSINESS. CITY EMPLOYEES, VOLUNTEERS AND AGENTS HAVE A LEGAL AND ETHICAL OBLIGATION TO USE SUCH SYSTEMS IN A PRODUCTIVE AND RESPONSIBLE MANNER. IT IS IMPERATIVE THAT CITY EMPLOYEES READ AND UNDERSTAND THE CITY POLICY WITH RESPECT TO ELECTRONIC AND TELEPHONIC COMMUNICATIONS AND ADHERE TO IT. EMPLOYEES WHO VIOLATE THIS POLICY ARE SUBJECT TO DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION. THIS POLICY IS NOT INTENDED TO NOR SHALL IT MODIFY OR AFFECT IN ANY MANNER ANY PROCEDURES, POLICIES, USAGES OR OTHER OFFICIAL OPERATION OF ANY EMERGENCY COMMUNICATIONS SYSTEMS OR DEVICES USED BY ANY CITY EMERGENCY RESPONSE AGENCY. IN THE CARRYING OUT OF OFFICIAL DUTIES, NO EMPLOYEE HAS OR SHALL EXPECT PRIVACY WITH RESPECT TO ANY USAGE OF SUCH CITY SYSTEMS. ACCESSING PERSONAL DATABASES, ACCOUNTS OR OTHER CONTACTS UNRELATED TO CONDUCTING THE BUSINESS OF THE CITY, IS PROHIBITED.

**1. DEFINITIONS.**

CITY ~ As used herein and unless otherwise specified shall mean the City of Newburgh, New York.

BUSINESS USE ~ City-provided computer systems that allow access to the Internet and electronic communication systems are the property of the City and are provided to facilitate the effective and efficient conduct of City business. Users are permitted access to the Internet and electronic communication systems to assist in the performance of their jobs. Each agency or department of the City shall follow this policy setting forth with specificity the work-related purposes for which such equipment and access are provided.

ELECTRONIC COMMUNICATION SYSTEMS ~ System used as a means of sending and receiving messages electronically through connected computer systems or the Internet, such as e-mail or voice mail.

INTERNET ~ An international network of independent computer systems. The World Wide Web is one of the most recognized means of using the Internet.

PERSONAL USE ~ Personal use means use that is not job-related. Personal use is prohibited if it:

- interferes with the user's productivity or work performance or with any other employee's productivity or work performance;
- adversely affects the efficient operation of the computer system;
- violates any provision of this policy, any supplemental policy adopted by the agency supplying the Internet or electronic communication systems, or any other policy, regulation, law or guideline as set forth by local, State or Federal law.

TELECOMMUNICATIONS SYSTEM(S); COMPUTER NETWORK ~ One or more computers that can store, provide access to, transmit, receive and/or share information, typically connected by cable, data line, or satellite link, including personal computers ("pc's,"), portable computers, word-processors or any other type or kind of device connected to or used in conjunction with the telecommunications or telephone systems of the City of Newburgh, including but not limited to any telephone or computer equipment, phone cards, copiers, facsimiles, printers, modems, projectors, audio and video equipment and other such devices and equipment; which are owned, leased, rented, borrowed or otherwise in the possession or use of or by the City of Newburgh.

TELEPHONE SYSTEM; TELEPHONE COMMUNICATIONS ~ Two or more telephones or telephone-like devices employed by employees, volunteers and agents of the City of Newburgh to communicate and transmit information.

USERS ~ All employees and agents of the City who use a City agency's telephonic or computer and/or other electronic communication systems. NOTE: Agencies which give consultants, contract personnel or other non-employees such as volunteers or interns access to the agency's telephonic or computer or other electronic communication systems shall require such individuals to abide by this policy.

## 2. PERSONAL USE OF CITY PROPERTY, FACILITIES AND EQUIPMENT PROHIBITED.

a. All electronic and telephonic communication systems and all communications and information transmitted by, received from, or stored in these systems are the property of the City and, as such, are to be used solely for City-related purposes. The use of any software and business equipment, including, but not limited to, the City's e-mail system, the Internet, telecopiers, computers, facsimiles, modems, telephones, cell phones/Personal Digital Assistants, and copy machines for private purposes is prohibited.

b. Employees using City property or equipment for personal purposes do so at their own risk. Employees are not permitted to use a password, code, access a file or retrieve any stored communication unless authorized to do so or unless they have received prior clearance from the City Manager and their department head. All passwords are City property and must not be shared



with any unauthorized person. No employee may use a pass code or voice-mail access code that has not been issued or approved by the City, or that is unknown to the City. City business may be conducted using only City computers and equipment. Use of any other computer requires *written* consent of the authorized Department Head.

3. IMPROPER E-MAIL AND INTERNET USE PROHIBITED

a. improper use of the City's e-mail system and any other electronic and telephonic communication, including the Internet, is prohibited. Examples of improper conduct include, but are not limited to:

- Transmitting offensive images, offensive jokes or remarks.
- Transmitting messages that can reasonably be interpreted as threatening, intimidating, coercive, discriminatory or harassing.
- Requesting dates and/or sexual favors, or making personal or sexual remarks to others or transmitting same.
- Any use that can reasonably be interpreted as demeaning, defamatory or abusive of any individual or group.
- Any use which would violate or tend to violate the privacy rights of any individual.
- Any use which is or may tend to be in violation of any licensing or other contract or agreement pertaining thereto binding the City.
- Any use that is disruptive or offensive to others or creates, encourages or permits a hostile work environment.
- Any use involving obscene, pornographic or prurient material.
- Any use promoting or advancing the interests of any candidate for public office or any political organization.
- Any use during which the user remains anonymous or uses a false or misleading name or identity.
- Any use which promotes or advances a private commercial business or interest.
- Any private or personal use of hardware or software which is the property of the City, on City premises or elsewhere.

- Any use that is fraudulent, illegal or contrary to City policies, or leads to liability or harms or would tend to harm the status, stature or image of the City, or would tend to or does expose the City to legal liability or penalty; or to significant or unusual or unnecessary costs or expenses.

#### 4. RIGHTS OF CITY CONCERNING USE OF CITY FACILITIES AND EQUIPMENT.

a. To ensure that the use of electronic and telephonic communications systems and City property and/or equipment is consistent with the City's legitimate business interests, authorized representatives of the City may monitor the use of such equipment from time to time. This includes monitoring Internet usage of any kind. This may also include listening to stored voice-mail messages.

b. The City reserves the right, at any time and for any purpose, to monitor, review, audit, intercept, access, delete, use and disclose all files, documents, telephonic messages, e-mail messages, sites, messaging systems, chat rooms, blogs, news outlets or other communications, created, received, sent or stored over the telephone, e-mail or computer systems of the City. Employees should understand that personal passwords, access codes, and hard disk drives should not be used; and do not in any manner alter these City rights, nor do they create any employee privacy rights or expectations. The City may monitor employee use of City equipment at any time at its discretion, with or without notice to the employee. Employees should further understand that deleting or erasing material from the system might not in fact remove the material from the system.

c. Employees may not share or disclose their passwords to any unauthorized person or use their passwords for any unauthorized purpose.

#### 5. CITY'S RIGHT TO AMEND ITS POLICY AND RULES.

The City may adopt and revise this policy and rules appertaining thereto as it may deem appropriate and necessary from time to time, as authorized by law. The City will adequately post revisions, but it is the user's responsibility to ensure that his/her use of the City of Newburgh computing and communication resources conforms to current policy.

#### 6. SPECIAL INTERNET AND E-MAIL CONSIDERATIONS

- a. (i) The City provides access to the Internet to some of its employees based upon the responsibilities of their position. The Internet represents a useful tool for the City in conducting its business, but like any other tool, it must be used properly. For purposes of this policy, the Internet includes any public electronic data communications network.

- (ii) Internet e-mail offers similar capabilities to other e-mail systems, except that correspondents may be external to the City. External e-mail messages may carry one or more attachments. An attachment may be any kind of computer file, such as a word processing document, spreadsheet, software program, or graphic image.
  - (iii) Just as the City has an official Internet web site, so do other organizations. Most public web sites are "read only," meaning that they permit a person who visits the site to read material posted on the Web site but not to leave a message. Other web sites permit visitors to establish continuing contact by leaving a message (the electronic equivalent of leaving your business card or a telephone message). The owner or operator of a private web site may record the information that a connection was made from the City. This can have important consequences to the City.
- b.
  - (i) Any and all use of the Internet and/or e-mail may be conducted solely in accordance with the terms and conditions of this Policy and Rules.
- c.
  - (i) No Violation of Copyright. Many of the materials on the Internet are protected by copyright. Even though they may seem to be freely accessible, many of the intellectual property laws which apply to print media still apply to software and material published on the Internet. Employees are permitted to print out web pages and to download material from the Internet for informational purposes as long as the purpose for such copying is directly related to City business and as long as such copying falls into the category of "fair use" which is the term used to describe a legal standard defining what the law does and does not allow. Copying or disseminating material that is copyrighted is prohibited. Employees having any questions regarding such materials should contact the Corporation Counsel for guidance in advance of such copying.
  - (ii) There are Federal and State laws which protect the rights of persons who originate creative works. Such works can include writings, artwork, graphics, humor, music and so on. Any employee using such material without the permission of the owner may be in violation of such laws and may expose themselves and the City to liability. Such use, which would tend to or would result in a violation of the copyright, patent, trademark or any other laws, rules or regulations of the United States or of the State of New York; or would tend to or would expose the City to liability for same, is prohibited.
  - (iii) As a general rule, employees may not forward, distribute, copy, re-publish or incorporate into another work, material retrieved from a web site or other external system. Very limited or "fair use" may be permitted by law in certain circumstances. Any employee desiring to reproduce or store the contents of a screen or Web site should contact the Corporation Counsel to ascertain whether the intended use is permissible.

d. Use of the World Wide Web includes all restrictions, which apply generally to the use of the City's e-mail and other electronic and telephonic equipment, as noted above. In addition, the following rules apply with respect to Internet usage:

- (i) No Downloading of Non-Business Related Data. The City does not allow the download of files from the Internet. However, if a need to download files arises, you must receive prior permission from both your department head and from the City Information Systems Manager.
- (ii) No Downloading of Application Programs. The City does not permit the download or installation on City computers of application software from the Internet. The City does not permit the downloading of any program or information which may infiltrate, damage, alter, interfere with or otherwise harm the proper functioning of City systems; or which is unrelated to the conduct of City business. Such software may not only contain embedded viruses, but also is untested and may interfere with the functioning of standard City applications.
- (iii) No Participation in Web-based Surveys without Authorization. When using the Internet with City equipment during the employee(s) workday, the user implicitly involves the City in his/her expression. Therefore, users should not participate in web or e-mail based surveys, interviews or chat rooms without authorization or permission of the department head.
- (iv) No use of Subscription-based Services without Prior Approval. Some Internet sites require that users subscribe before being able to use them. Users should not subscribe to such services without the authorization of their department head and the City Manager.
- (v) Remote Access to any systems of the City. Remote access to any systems of the City without proper advance authorization is prohibited.

## 7. SECURITY PRECAUTIONS.

a. To increase security, users shall take all necessary and appropriate measures to protect all City systems and equipment and the information which is stored therein and accessed and used thereby. Such measures shall include but not be limited to the following:

- (i) Users should log off computer systems or take other appropriate precautions when their computers are not in use for a significant period of time.

- (ii) Passwords and user accounts must not be "shared" with any unauthorized individual.
- (iii) All anti-virus and other protective measures shall be employed at all times that City systems are in use.
- (iv) Careless, reckless, malicious or intentional damage to City systems is prohibited.
- (v) Any violations of any provision or part of this policy shall be reported immediately to the department head and the City Manager.

b. Rules for Use of Personal Computers. City employees, agents and volunteers, **SHALL NOT:**

- (i) Load software (screen savers, tutorials, application software, hardware, freeware, etc.) without prior written approval from your department head AND from the City's Information Systems Manager.
- (ii) Copy, download, lend or allow unauthorized use of or access to software owned and/or licensed for use by the City.
- (iii) Use, attach, load, apply, install or otherwise introduce into City systems personally owned and/or licensed software and/or hardware.
- (iv) Install hardware or hardware drivers; and **SHALL NOT** relocate computer equipment or swap equipment from one PC to another.
- (v) Exchange, or themselves take or allow others to take computer equipment, discs, software or any other City-owned property off of City premises or move or remove any City property without permission of the department head or City Manager. Requests to use any City-owned equipment or materials off-site must be made in writing and must be approved in advance by both the department head and the Information Systems Manager.
- (vi) Act such as to accept and use or allow others the acceptance and use of computer hardware or software from other sources without the advance written authorization from the department head and the Information Systems Manager.
- (vii) Turn off anti-virus protection or change settings pertaining thereto.
- (viii) Change system settings (Network Neighborhood, Device Setup, E-mail Server options, Control Panel Regional Settings, etc.) or modify (delete or rename) system icons (My Computer, Network Neighborhood, Microsoft Word, etc.) from the main desktop screen.

- (ix) Act so as to use or allow others the use of e-mail and Internet browsing for other than City business.
- (x) Download from the Internet or open e-mail attachments that are ".exe" files unless the source, sender and/or originator has been properly verified.
- (xi) Use the Internet inquiry/download for inappropriate content.
- (xii) Use media, such as CDs or diskettes, unless they have been checked for viruses by authorized and qualified City staff.
- (xiii) Share computer passwords or access codes with any unauthorized person(s) at any time. Computer passwords are not to be stored or posted in any publicly accessible area nor kept among private office possessions in a manner that could lead to their exposure even with substantial effort and ingenuity. Information concerning or to the effect that any unauthorized person(s) know a password or access code(s) or other confidential information must be reported to the department head and to the City Manager immediately. The City may require periodic changes of passwords at its discretion.
- (xiv) Fail to check any and all floppy diskettes inserted for viruses. All users are required to notify the City's Information Systems Manager, the department head and the City Manager immediately if a virus is detected.
- (xv) Use or access any internet radio, television or other similar media station for any reason unrelated to city business or purposes.
- (xvi) Use any instant messaging client(s) or services, such as but not limited to AOL Instant Messenger, Yahoo Messenger, MSN Messenger or others, unless prior written permission has been given therefore by both the department head and city Manager.
- (xvii) Use any free or promotional internet web-mail sites unless prior written approval is granted therefore by both the department head and the City Manager.

c. All City employees, agents and volunteers shall abide by the following:

- (i) All data files (documents, spreadsheets, etc.) must be saved on the server (F: drive, G: drive or Z: drive) folders and not on the PC. Storing files on the PC hard drives is done at risk. It is not the responsibility of Information Services to restore this information if there is a PC failure.

d. Rules for Electronic Mail (E-mail & Internet):

- a. The City's e-mail systems are City-owned property and are intended to be used for official City business only. All messages sent or received via e-mail are City property. It is against City policy to use e-mail for any unlawful endeavor.
- b. Employer Rights ~ The City reserves and intends to exercise the right to access and disclose contents of e-mail messages for any purpose, including but not limited to:
  - (i) Finding lost messages
  - (ii) Providing assistance when an employee is out of the office or otherwise unavailable
  - (iii) Evaluating the effectiveness of electronic mail
  - (iv) Complying with an investigation into suspected unlawful acts
  - (v) Recovering from system failures or other emergencies
  - (vi) Investigating suspected breaches of security or violation of City policies.
- c. Usage Guidelines ~ All users shall exercise restraint when sending very large files, and shall not unnecessarily or inappropriately send messages to a large number of recipients, thereby wasting City network resources.
- d. When the City grants an employee an e-mail account, it is the responsibility of the employee to adhere to the following guidelines:
  - (i) E-mail messages must not involve personal sales or solicitation; must not be associated with any outside business activity; and must not potentially embarrass the City or violate City policy.
  - (ii) Chain letters and/or messages are prohibited and may be illegal and must not be transmitted through City e-mail at any time.
  - (iii) Region-Wide E-mail Messages ~ E-mail sent to all members on a "Global Address List" generates a heavy burden on the computer systems and network that have to route and store them. In many cases global messages interrupt the work of a substantial number of people. All Global Address e-mail must be approved by the department head before it is sent.
- e. Reporting of Security Violations: Any employee suspected of unauthorized use of e-mail should be reported immediately to the department head and to the City Manager.

8. COMPLIANCE (ENFORCEMENT FOR VIOLATION(S)):

- a. Any violation(s) of this policy may result in disciplinary action under the City's Employee Disciplinary Policy up to and including termination. Other possible discipline actions might be:

1. Verbal and/or written counseling.
  2. PCs will be "locked down" to run only authorized standard software or other limitations on computer use.
  3. Internet access will be denied if improperly used.
  4. E-mail privileges may be revoked.
- b. As a condition of employment and continued employment, employees are required to sign an "Electronic Communications and Telephone Communications Acknowledgment Form" attached to this policy and available from the City Manager's Office. New employees are required to sign this form on their first day of City employment.

9. INTERPRETATION AND INTEGRATION

- a. The City Manager, with the advice and in consultation with the Information Systems Manager and the Corporation Counsel, shall be responsible for official interpretation of this policy. Questions regarding the application of this policy should be directed to the Corporation Counsel.
- b. This law and the policies, rules, terms and conditions hereof shall be interpreted and applied as provided under the laws of the United States and of the State of New York.
- c. Should any part or portion of this policy be ruled invalid by any court or agency of competent jurisdiction, the remainder shall remain in full force and effect, as the sense thereof may permit.





City of Newburgh  
**INDUSTRIAL DEVELOPMENT AGENCY**

83 Broadway  
Newburgh, NY 12550  
*ida@cityofnewburgh-ny.gov*

TEL: (845) 569-7369

March 20, 2017

Mayor Judy Kennedy  
Members of the City Council  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550

RECEIVED  
3/24/17

RE: City of Newburgh Industrial Development Agency  
Board Vacancies

Dear Mayor, Council Members, and City Manager:

Please be advised that there are two vacancies on the Agency's board as former board members Jimmy Mera and Richard Bedrosian have resigned. It should be noted that Mr. Bedrosian has served on the City of Newburgh Industrial Development Agency since 2008 and was instrumental in working for the re-certification of Agency by the Authorities Budget Office. Mr. Mera served a short time; however, his input was valuable and useful.

Consistent with IDA policy, public notification of the vacancies was made in the press and on our website; candidates were invited to submit their resumes and indicate their interest in serving on the Board.

On January 18 and March 6 the Governance Committee interviewed the candidates and discussed their interest in serving on the IDA. Prior to the interviews, the candidates were asked to carefully review the Duties and Responsibilities of Board Members (enclosed) and York State legislation regulating industrial development agencies.

On March 6th, following recommendation of the Governance Committee, the members of the Agency voted to recommend Adam Pollick and Marlon Ramos for Council approval. Their resumes are attached.

Therefore, consistent with General Municipal Law, Article 18A Section 913, the IDA respectfully requests that the City Council review the candidates' resumes and approve their appointment.

Sincerely,

Joshua L. Smith  
Chairman

cc: City Manager, Council Members

# **CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY**

## **Board of Directors Duties and Responsibilities**

### **Purpose:**

The purpose of this Statement is to set forth the standards of conduct and responsibilities of the City of Newburgh Industrial Development Agency (the "Agency") Board of Directors in furtherance of efficient operations so as to promote and assist economic development in the City of Newburgh and fulfill the purposes of the Agency as set forth in the General Municipal Law.

### **Role and Expectations:**

It is the responsibility of Board members to execute direct oversight of the Agency's Executive Director and other senior management in the effective and ethical management of the Agency. Board members are expected to understand, review, and monitor the implementation of fundamental financial and management controls and operational decisions of the Agency. In executing their role, Board members shall adhere to the fiduciary duties of care and loyalty which they owe to the Agency.

- a. **Duty of Care.** A Board member must perform his or her duties, including those duties as a member of any committee of the Board upon which he or she may serve, in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances.
- b. **Duty of Loyalty.** Board members are bound by their duty of undivided and unqualified loyalty to the Agency, a duty which encompasses good faith efforts to ensure that their personal profit is not at the expense of the Agency.
- c. Adopt policies and procedures as required by the Public Authorities Accountability Act of 2005 and 2009.
- d. Board members may exercise and fulfill these duties by:
  1. Understanding the Agency's role in the economic development community;
  2. Regularly attend and constructively participate in meetings of the Board and related committees;
  3. Reviewing and understanding the materials provided in advance of meetings and any other materials provided to the Board from time to time;
  4. Informing oneself prior to making decisions by utilizing material information reasonably available;
  5. Remaining reasonably accessible to the senior management on specific issues which may not require the attention of the entire Board but where an individual Board member's insights may be helpful;
  6. Review and monitor the implementation of financial and management controls;
  7. Members are required to sign the Fiduciary Duty Acknowledgement.

### Board Member Conduct:

- a. Conflicts of Interest. Board members are required to conduct themselves in compliance with the conflict of interest requirements imposed upon members of industrial development agencies under Article 18A of the General Municipal Law and the requirements of the Agency's Code of Ethics.
- b. Personal Loans. Board members must refrain from accepting or approving any personal loan from the Agency.
- c. Decorum. Board members must not engage in conduct or make any public statement likely to prejudice the functions of the Agency or harm, defame, or otherwise bring discredit upon the Agency.
- d. Separation of Board and Management. No Board member may serve as the Agency's Executive Director or hold any other equivalent position while also serving as a Board Member.
- e. A Board Member or Board nominee:
  - is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity;
  - is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority;
  - is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, and rate determinations, or any other similar actions of the public authority or an affiliate.

### Board Committees and Composition:

The Board of Directors is required to establish an Audit Committee, a Governance Committee, and a Finance Committee (for authorities that issue debt/bonds). Committee appointments are based on a board member's skills, profession, and/or career experiences. The committee structure suggests that Board appointees have experience or skills related to the tasks of each committee. Article 18A of the NYS General Municipal Law and proposed laws suggests that candidates for the board include representatives from government, law, environment, labor, school districts, and business.

- . Governance Committee is to examine ethical and conflict of interest issues, perform board self-evaluations, and recommend changes to by-laws to the full Board.
- . Finance Committee is to review proposals for the issuance of debt by the agency and make recommendations to the Board of Directors. It is suggested that the Financial Committee seek a person (membership on the Board is not a requirement) with experience in bond financing.
- . Audit Committee is to manage the procurement of the auditors and supervise the audit process and make recommendations to Board of Directors.

**Required Filings:**

Board members are required by New York Public Authorities Law Section 2825 to file annual financial disclosure statements with the Orange County Board of Ethics. The completed financial disclosure form covering the immediately preceding calendar year must be submitted to the Orange County Board of Ethics on or before May 15 of each year.

**Training:**

- a. All Board members appointed on or after January 13, 2006 must participate in state-approved training within one year (or sooner) of appointment.
- b. All Board members must participate in continued training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities, and to adhere to the highest standards of responsible governance.
- c. All new appointees are required to participate in a staff presentation of the provisions of Article 18A of the NYS General Municipal Law.

# **Authorities Budget Office**

## **Policy Guidance**

**No. 10-01 Date Issued:** March 1, 2010

**Supersedes:** New

**Subject:** Acknowledgement of Fiduciary Duty

**Statutory Citation:** Public Authorities Law Section 2824(1)(h)

**Provisions:** Section 6(i) of Public Authorities Law, as amended by Chapter 506 of the Laws of 2009 ("The 2009 Public Authorities Reform Act" or "PARA"), requires the Authorities Budget Office (ABO) to "develop and issue" a written acknowledgement that all board members must execute as part of their duties and responsibilities under Section 2824 of Public Authorities Law. By signing this acknowledgement a board member is stating "that he or she understands his or her role and fiduciary responsibilities" as well as his or her "duty of loyalty and care to the organization and commitment to the authority's mission and the public interest."

Pursuant to PARA, every board member of a Public Authority is required to sign an acknowledgement of fiduciary duty at the time he or she takes the oath of office. The effectiveness of the acknowledgement will be deemed applicable throughout the duration of such board member's term and/or for as long as such director continues to serve in such capacity. Board members appointed to their positions prior to the effectiveness of PARA and the implementation of this new requirement are required to execute an acknowledgement by May 1, 2010.

**Authorities Budget Office Policy Guidance:** The primary responsibility of a board member is to understand the mission and public purpose of the Authority and to act in the best interests of the Authority, its mission, and the public. The intent of this written acknowledgement is to re-affirm the importance of this duty to board members.

The ABO is directing all state and local public authorities to use the attached acknowledgement form to satisfy this statutory requirement. Public authorities are to maintain signed copies of the acknowledgement throughout the official term of each active board member. State and local authorities will also be expected to certify as part of the Annual Report submission that these statements were executed in accordance with Section 2824 of Public Authorities Law. The failure to execute this acknowledgment will be considered a failure to comply with the requirements of Public Authorities Law. The failure to act in accordance with the principles stated in this acknowledgment can be considered a breach of fiduciary duty and could result in a recommendation that the board member be sanctioned.

A board member is to sign a new acknowledgement document at the start of each new term to which the board member is appointed.



## Acknowledgement of Fiduciary Duties and Responsibilities

As a member of the Agency's Board of Directors, I understand that I have a fiduciary obligation to perform my duties and responsibilities to the best of my abilities, in good faith and with proper diligence and care, consistent with the enabling statute, mission, and by-laws of the Agency and the laws of New York State. The requirements set forth in this acknowledgement are based on the provisions of New York State law, including but not limited to the Public Authorities Reform Act of 2009, Public Officers Law, and General Municipal Law. As a member of the board of directors:

### I. Mission Statement

I have read and understand the mission of the Agency; and the mission is designed to achieve a *public* purpose on behalf of the State of New York. I further understand that my fiduciary duty to this Agency is derived from and governed by its mission.

I agree that I have an obligation to become knowledgeable about the mission, purpose, functions, responsibilities, and statutory duties of the Agency and, when I believe it necessary, to make reasonable inquiry of management and others with knowledge and expertise so as to inform my decisions.

### II. Deliberation

I understand that my obligation is to act in the best interests of the Agency and the People of the State of New York whom the Agency serves.

I agree that I will exercise independent judgment on all matters before the board.

I understand that any interested party may comment on any matter or proposed resolution that comes before the board of directors consistent with the laws governing procurement policy and practice, be it the general public, an affected party, a party potentially impacted by such matter or an elected or appointed public official. However, I understand that the ultimate decision is mine and will be consistent with the mission of the Agency and my fiduciary duties as a member of the Agency's Board of Directors.

I will participate in training sessions, attend board and committee meetings, and engage fully in the board's and committee's decision-making process.

### III. Confidentiality

I agree that I will not divulge confidential discussions and confidential matters that come before the board for consideration or action.

### IV. Conflict of Interest

I agree to disclose to the board any conflicts, or the appearance of a conflict, of a personal, financial, ethical, or professional nature that could inhibit me from performing my duties in good faith and with due diligence and care.

I do not have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of my duties in the public interest.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Authority Name: \_\_\_\_\_ City of Newburgh Industrial Development Agency

Date: \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_

**Adam C. Pollick**  
**192 Montgomery Street, Newburgh N.Y. 12550**  
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**PROFESSIONAL EXPERIENCE**

**BeaconLBS (*wholly-owned subsidiary of LabCorp*), Montvale, NJ**

*Director, Provider Engagement (2013 – present)*

- Responsible for the oversight and execution of the onboarding process for physician office-based and independent reference laboratories in conjunction with new Laboratory Benefits Management Program rolling out to United HealthCare's Fully-Insured Commercial Florida market
- Cultivate and manage relationships with providers impacted by program rollout including but not limited to large physician practices, independent laboratories, hospital laboratories and ambulatory surgery centers
- Primary BeaconLBS point-of-contact responsible for the relationship with LabCorp; also act as the liaison and first point of contact for United HealthCare Network staff for purposes of addressing provider concerns and arranging education and outreach
- Identify claims processing scenarios which could potentially impact reimbursement on claims, in connection with program policy and related system configuration. Facilitate research efforts as appropriate
- Crafted medical policy approval and tracking process. Included collecting policy information, facilitating creation of policy repository and approval procedure
- Calculate and facilitate audit of contracted laboratory fee schedules. Oversee claims system update and testing process

**Advanced Billing Services (ABS), Inc., Hawthorne, NY**

*Associate Director, Managed Care (2004 – 2013)*

- Responsible for all financial forecasting of reimbursement revenue and overall financial impact to physician groups joining ABS's largest physician group client, which was a pediatric practice with over 250 providers. These forecasts used by the client's leadership team for the budgeting process as well as negotiations with the practices
- Facilitated and participated directly in managed care contract negotiations with managed care companies, TPAs and benefit funds.
- Directly responsible for all claims reimbursement analysis and financial analytics and projections used in the managed care contracting process. This included identification of areas of focus for negotiations
- Managed implementation of new and revised managed care contracts, specifically pertaining to reimbursement, credentialing and claims rules. This included the process of auditing and monitoring contracted reimbursement of physician claims. Presented results to make recommendations to client's senior management team
- Procured and analyzed medical and claims payment policies of the managed care carriers, Medicare and Medicaid. Aid in the decision-making process for Operations unit using this information
- Managed and cultivated relationships with ABS physician clientele. Work collaboratively to identify reporting needs and provide education regarding ABS policies as well as claims and payments policies of Managed Care organizations. Make recommendations as appropriate
- Managed a team of four (4) direct reports, with a total of six (6) employees. Team consisted of Credentialing Manager, two Project Manager and a Managed Care Analysts. Responsible for the team's workflow, priority management and coaching opportunities

- Managed the Reporting process for ABS clients. Generated or facilitated generation of all reports provided to Senior Management of ABS clientele as part of monthly process; acted as liaison to IT Department to facilitate report development tailored to dynamic and fluid reporting requirements of ABS staff as well as clientele
- Developed workflow efficiencies and identify opportunities for revenue enhancement for ABS clientele including coding, coding patterns and appeal protocol
- Acted as liaison to IT Department to facilitate report development tailored to dynamic and fluid reporting requirements of ABS staff as well as clientele

#### **HealthNet of the Northeast, White Plains, NY**

##### ***Lead Hospital Contract Analyst – Network Management (2003 –2004)***

- Analyzed hospital claims data for purposes of forecasting financial impact of contract changes for NY hospital systems during the contract negotiation process
- Identified of opportunities to provide enhanced reimbursement structure
- Participated in reporting results directly to Senior Management during biweekly contracting meetings

#### **Towers Perrin, Stamford, CT**

##### ***Associate – Health and Welfare Division (2002 – 2003)***

- Participated in health plan procurements for clients. Process included collecting and analyzing plan design and rates from insurance carriers, creating high-level summaries for the clients and new plan implementation oversight
- Calculated health plan renewal rates for one large client; conducted other census data analytics

#### **Oxford Health Plans, White Plains, NY (1994-2002)**

##### ***Various Analytical, Operational and Supervisory Roles of Increasing Responsibility***

- Managed a team of eight Medicaid Outreach Representatives including oversight of Oversight tracking prenatal and asthmatic membership
- Chairman of Physician Fee Committee; committee determined fee methodologies. Calculated physician fee schedules
- Financial analysis physician claims data for forecasting and budgetary purposes
- Provided education on efficiently accessing non-ER based health care on in-network basis
- Organized new member orientations in the New Haven, CT community
- Facilitated design of a Database used by provider relations to track provider outreach
- Frequently responded to Department of Insurance and NYS Medical Society

#### **CERTIFICATIONS and SKILLS**

- Certified Professional Coder (CPC) - Proficiency with CPT-4, HCPCS, ICD-9 coding
- Microsoft Office Suite (Excel, Microsoft Access), Business Objects
- Strong knowledge of RBRVS and capitation based reimbursement models
- Speak Spanish conversationally. Working knowledge of Russian language

#### **EDUCATION**

- Master of Science, Pace University (2000) – Psychological Counseling
- Bachelor of Arts, State University of New York at Albany (1992) – Russian Language, Literature, Culture

#### **ACTIVITIES**

- Member Healthcare Financial Management Association (HFMA), Hudson Valley
- Member of American Association of Professional Coders



## **Marlon M. Ramos**

140 Benkard Avenue, Newburgh, New York 12550 Phone: 914-733-2309 E-Mail: Marlon.M.Ramos@live.com

### **Experience**

#### **Retail Account Executive AT&T—New York | New Jersey Market**

**August 2015—February 2017**

- Created, implemented, monitored, and measured detailed sales plans with a total of 14 locations promoting self-sustainability
- Managed to strengthen existing business relationships with current partners while building new relationships in order to gain a higher Gross Profit
- Demonstrated month over month growth on key metrics for the company translating to Year over Year improvement in territory performance and higher market penetration
- Worked with Tiger Team to build a plan of attack for new products and services to be implemented in all the NY | NJ Market

#### **Assistant Store Manager AT&T-Jefferson Valley Mall/Palisades C.M.**

**September 2013—August 2015**

- Lead, coached, developed and motivated Retail Sales Consultants so that they can execute the best behaviors in order to move AT&T towards a world class organization in customer service
- Lead my team to reach high levels of performance and increased the rate of penetration, which led to the increase of return on operations, and increase of reputation brand for AT&T
- Excelled in the organizational aspect of the business such as; inventory controls, implemented the proper coding in inventory adjustments, and minimizing shrinkage by reducing negative variances through effective inspection
- Monitored sales and operational processes in order to be audit compliant, and successfully shared the best practices with peers to further improve the territory's overall performance
- Achieved 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> ranking under the Directorate for the months of February, March, and April, by setting proper behaviors in place, having a tight inspection process, great follow up, and most importantly leading by example

#### **Retail Sales Consultant AT&T-Newburgh Town Center**

**May 2008—August 2013**

- Effectively grew the business by meeting and exceeding AT&T set quotas on a monthly basis
- Recognized as the number one representative in my location in willing to recommend, rate of penetration in the consumer market, and led the business growth for my location
- Led the development process, post training, for new hires in the locations and successfully immersed them in the AT&T corporate culture

### **Education**

#### **State University of New York at New Paltz**

**August 2010—August 2012**

*Graduated Bachelors of Science in Accounting*

#### **State University of New York Orange**

**August 2004—May 2007**

*Associates in Business Administration*

### **Skills**

**Software Skills:** Microsoft Excel proficient, Microsoft Word Proficient, PowerPoint proficient, bilingual (Spanish/English), coaching representatives, affective presentation Skills, documentation, leadership skills, networking, telecommunication, integrated point of sales skills, exceptional listener, team player, analytical thinker, strong negotiation skills, strong follow up, detailed oriented, and knowledge seeker

**Awards and recognitions:**

- Achieved the highest percent to goal in 3 metrics for the month of August 2016 in the Directorate (Customer experience, Home Entertainment, and Business to Business)
- Achieved the highest percent to goal in 2 metrics for the Month of November 2016 in the Directorate (Connected Homes, and Business to Business)
- Awarded with highest 4<sup>th</sup> Quarter performance in 2016 in Home Entertainment and Business to Business
- 2012-2013 AT&T Small Business Certified, Most Gross Adds Per SFTE for the month of March in territory