



City of Newburgh Council Work Session  
*Sesion de trabajo del Concejal de la  
Ciudad de Newburgh*  
April 20, 2017  
6:00 PM

Council Meeting Presentations

1. A Public Hearing will be held on Monday to hear public comment concerning a 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)

*Una resolución para programar una audiencia pública para el 24 de abril de 2017 para escuchar los comentarios públicos con respecto a una Ley Local la cual enmienda el Capítulo 155 del Código de Ordenanzas de la Ciudad de Newburgh para agregar una nueva sección titulada "Licenciatura Reciproca". (Michelle Kelson)*

2. A Public Hearing is scheduled for Monday's Council Meeting to hear public comment concerning a 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)

*Una resolución programando una Audiencia Pública para el 24 de abril de 2017 para escuchar los comentarios públicos con respecto a una Ley Local Enmendando el Capítulo 172 del Código de Ordenanzas de la Ciudad de Newburgh para agregar "Artículo II – Fuegos Artificiales y Dispositivos Chispeantes". (Michelle Kelson)*

3. March Financials

The Monthly Financial report will be presented at Monday's Council Meeting by City of Newburgh Comptroller Katie Mack.

Work Session Presentations

4. IDA Appointments

Teri Waivada, Executive Director of the Industrial Development Agency (IDA) will introduce to the City Council the IDA's recommendations to fill Board Member vacancies.

#### Finance/Finanza

5. License Agreement Renewal with Mobile Life Support Services Inc.  
Resolution authorizing the execution of a license agreement renewal for the use of classroom space located at 22 Grand Street for the purpose of training by the Mobile Life Support Services, Inc. (Assistant Chief William Horton & Katie Mack)
6. Vendor Services Agreement Renewal with Mobile Life for EMS Services  
Resolution designating Mobile Live Support Services, Inc. as the designated provider of emergency medical services for the City of Newburgh in accordance with the terms of an Agreement between the parties and authorizing the City Manager to execute a renewal of said Agreement. (Asst. Chief William Horton & Katie Mack)
7. NYS DEC Reimbursement of PFOS Expenses  
Resolution authorizing the City Manager to enter into an Agreement with the New York State Department of Environmental Conservation for reimbursement of additional costs incurred by the City of Newburgh as a result of providing an alternate source of drinking water. (Katie Mack)

#### Planning and Economic Development/Planificación y Desarrollo Económico

8. Purchase of 120 West Parmenter Street  
Resolution to authorize the conveyance of real property known as 140 West Parmenter Street (Section 38, Block 2, Lot 42) at private sale to Michael Serinsky for the amount of \$4,235.00. (Deirdre Glenn)
9. Master Listing Agreement with River Realty for Real Estate Brokerage Services for the City of Newburgh  
Resolution authorizing the City Manager to enter into an agreement with River Realty Services, Inc. for real estate brokerage services. (Deirdre Glenn)
10. Summer Youth Employment Program  
Resolution authorizing the City Manager to enter into an agreement with the County of Orange for the Summer Youth Employment and Training Program

to provide young people to work for the City of Newburgh for the summer of 2017. (Deirdre Glenn)

Discussion Items/Temas de Discusión

11. Update on 104 South Lander St.  
(Lt. Rich Carrion)
12. Council Rules and Order of Procedure  
See proposed Ordinance amending Section 20-3 Order of Business and proposed amendments to Resolution 47-2016 Council Rules and Order of Procedure. (City Council & Michelle Kelson)
13. Electronic and Telephonic Communications Policy  
Latest redline and clean drafts of Electronic & Telephone Communications Policy. (Michelle Kelson & Katie Mack)
14. Activity Center - Fees Waived  
(Councilwoman Rayford)
15. Local Towing Companies  
(Councilwoman Holmes & Councilwoman Abrams)  
Discussion with Ben Papaleo, Principal in Towing Company.
16. Update on Shot Spotter  
(Lt.Carrion & Katie Mack)
17. Update on Skateboard Park  
(Deirde Glenn)
18. Recreation Department - Update on Summer Camp  
Recreation Department Summer Camp Update. (Derrick Stanton)
19. Update on EEOC Report  
(Councilwoman Holmes)

20. Charter Review Committee for Strong Mayor form of Government  
(Councilwoman Holmes)

Executive Session/ Sesión Ejecutiva

21. Pending litigation

**RESOLUTION NO.: 98 - 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.: 99 - 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.

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End of Document

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**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

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: 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.

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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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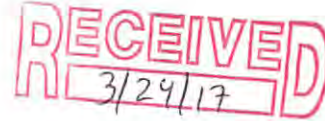
City of Newburgh  
**INDUSTRIAL DEVELOPMENT AGENCY**

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



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\_\_\_\_

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

OF

APRIL 24, 2017

**A RESOLUTION AUTHORIZING THE EXECUTION OF  
A LICENSE AGREEMENT RENEWAL FOR THE USE OF CLASSROOM SPACE  
LOCATED AT 22 GRAND STREET FOR THE PURPOSE OF TRAINING  
BY THE MOBILE LIFE SUPPORT SERVICES, INC.**

WHEREAS, by Resolution No. 60-2013 of March 25, 2013, the City of Newburgh authorized a license agreement with Mobile Life Support Services ("MLSS") for the use of classroom space located at 22 Grand Street for the training purposes which include various CPR, First Aid and EMS Certification programs; and

WHEREAS, the term of the agreement was for two (2) years commencing on April 1, 2012 and terminating on March 31, 2015 with an annual license fee of \$40,000.00 per year; and

WHEREAS, by Resolution No. 100-2015 of April 27, 2015 the parties renewed the license agreement for an additional two year term commencing on April 1, 2015 and terminating on March 31, 2017; and

WHEREAS, the parties wish to renew the license agreement for an additional one year term commencing on April 1, 2017 and terminating on March 31, 2018; and

WHEREAS, the City Council has examined such license agreement, a copy of which is annexed hereto and made a part of this resolution, 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.



## LICENSE AGREEMENT

This License Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, two thousand and seventeen, by and between the CITY OF NEWBURGH (hereinafter "City"), a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as owner of certain premises located at 22 Grand Street in the City of Newburgh, New York as "LICENSOR"; and MOBILE LIFE SUPPORT SERVICES, INC. ("hereinafter "Mobile Life"), a business corporation organized and existing under the laws of the State of New York having a mailing address at 3188 Route 9W, New Windsor, New York 12553 as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to and using certain classroom space located at 22 Grand Street, Newburgh, New York as described on Schedule A attached hereto for training purposes;

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's officers, employees, and agents, upon the conditions hereinafter stated, the non-exclusive license or privilege of entering upon certain classroom space located at 22 Grand Street, Newburgh, New York, as described on Schedule A hereto attached hereto (the "Classroom Space"), for training purposes on an as-available basis, for a term of one (1) year commencing on April 1, 2017 and terminating on March 31, 2018. Such training shall include but not be limited to CPR, First Aid, and EMS Certification programs for the benefit of both City employees and involved residents (collectively "Training") as follows:

1. MLSS will provide 3 AEDs and wall mounts to be installed by the City in buildings located at 123 Grand Street, 88 Pierces Road and 22 Grand Street and will include Zoll AED Plus with lithium ion batteries, adult and pediatric pads;
2. At the City's election, MLSS will provide CPR training for designated City employees to include 25 AHA text books located at the Newburgh Fire Department with associated costs:
  - a. 25 books at \$15.00 per book
  - b. Pocket masks and cards at \$20.00 per employee
  - c. Instructors at \$40.00 per hour per instructor (3 hour class with 1 instructor per 6 students

Second: Licensee agrees to undertake the Training in such manner as will fully comply with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

Third: As consideration for this License, Licensee shall pay Licensor a license fee of \$40,000.00 per year, to be paid in quarterly payments of \$10,000.00 each on or before January 1, April 1, July 1, and October 1 of each year of this License Agreement, except that the first payment to be made hereunder shall be made on May 1, 2017. Licensor shall not charge Licensee any additional use or maintenance fees for the Classroom Space.

Fourth: Licensee shall notify the Licensor at least ten (10) days in advance of the date of each Training session that it requires the Classroom Room and the anticipated number of participants in such session. The Licensor shall evaluate the request for use of the Classroom Space and shall within two (2) business days advise Licensee whether it is available on such date. If the Classroom Space is not available on such date, Licensor shall provide Licensee with alternative dates. If none of such alternative dates are acceptable to Licensee, Licensee shall find other space for such Training session at no cost to the Licensor.

Fifth: Licensee shall maintain the Classroom Space in the condition it was found prior to each Training session.

Sixth: Third: In connection with the exercise of the license herein, Licensee agrees to hold Licensor harmless from any loss, cost, damages, lawsuit, damage to person or property, and the cost of litigation (including attorneys fees) caused solely by Licensee or its agents, servants or employees in the use of said licensing. After such access, Licensee to return the properties to substantially the same condition as existed prior to said access. Licensee shall, at its sole expense, keep and maintain a policy of commercial public liability insurance which shall include coverage for Licensee's actions upon the properties during the term of this Agreement. This insurance policy shall name Licensor as an additional insured and afford protection in limits of not less than \$2,000,000.00 for bodily injury or death in any one accident, and not less than \$500,000.00 for property damage. All insurance shall be effected under standard form policies, issued by insurers of recognized responsibility authorized to do business in the State of New York and having a national rating of A-9 or better, provided that, at Licensor's option, such coverage may be effectuated through a blanket policy of insurance so long as the risks in respect of the properties are separately scheduled or identified. Licensee has delivered to Licensor certificates of this insurance coverage and, not less than thirty (30) days prior to the expiration of the coverage, a certificate of the new policy accompanied by evidence reasonably satisfactory to Licensor of payment of premiums therefor. Licensee covenants, and this insurance coverage shall include, an agreement by the insurer that the policy shall not be canceled prior to the termination of this Agreement.

*Remainder of this page intentionally left blank*

THE CITY OF NEWBURGH  
LICENSOR

By:

\_\_\_\_\_  
MICHAEL G. CIARAVINO, City Manager  
Per Resolution No.

MOBILE LIFE SUPPORT SERVICES, INC.  
LICENSEE

By:

\_\_\_\_\_  
SCOTT WOEBSE, Vice President COO

Approved as to Form:

\_\_\_\_\_  
KATHRYN MACK  
City Comptroller

Approved as to Form:

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

**Agreement for the Licensing  
Of Classroom Space with the  
City of Newburgh**

Mobile Life Support Services (MLSS) from time to time requires available classroom space, within the confines of the City of Newburgh, to conduct various CPR, First Aid, and EMS Certification programs for the benefit of both City employees and involved residents. Under this license, MLSS would seek to compensate the City of Newburgh (CITY) for the use of any appropriate classroom space owned and operated by the CITY on an as-available basis, and both parties would agree as follows:

- MLSS would compensate the City of Newburgh in the amount of \$40,000.00 per year for the next two years, commencing April 1, 2011 and concluding March 31, 2013.
- MLSS will pay the licensing fee to the CITY in four (4) equal quarterly payments of \$10,000.00 each, with the first payment due April 1, 2011.
- MLSS will notify the CITY at least ten (10) days in advance of the required date that available classroom space will be required, and the anticipated number of participants that will be attending.
- The CITY will evaluate the request for classroom space, and determine what available classroom space it may have for use on the date(s) in question, and advise MLSS accordingly.
- Should the CITY not have available classroom space on the requested date in question they shall immediately notify MLSS, and efforts will be made to see if an alternative date is acceptable.
- Should MLSS be unable to reschedule the classroom session with the CITY, they will be required to make their own arrangements for suitable classroom space elsewhere with no cost to the CITY.
- MLSS shall maintain any leased classroom space in the condition it was found prior to their use, and will only conduct classroom activities that have been pre-approved by the CITY.
- Under this license, the CITY will not seek any additional use or maintenance fees from MLSS for the use of any classroom authorized by the CITY.

Agreed to .....

RESOLUTION NO.: 100 - 2015

OF

APRIL 27, 2015

A RESOLUTION AUTHORIZING THE EXECUTION OF  
A LICENSE AGREEMENT RENEWAL FOR THE USE OF CLASSROOM SPACE  
LOCATED AT 22 GRAND STREET FOR THE PURPOSE OF TRAINING  
BY THE MOBILE LIFE SUPPORT SERVICES, INC.

WHEREAS, by Resolution No. 60-2013 of March 25, 2013, the City of Newburgh authorized a license agreement with Mobile Life Support Services ("MLSS") for the use of classroom space located at 22 Grand Street for the training purposes which include various CPR, First Aid and EMS Certification programs; and

WHEREAS, the term of the agreement was for two (2) years commencing on April 1, 2012 and terminating on March 31, 2015 with an annual license fee of \$40,000.00 per year; and

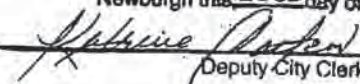
WHEREAS, the parties wish to renew the license agreement for an additional two year term commencing on April 1, 2015 and terminating on March 31, 2017; and

WHEREAS, the City Council has examined such license agreement, a copy of which is annexed hereto and made a part of this resolution, 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.

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh  
herby 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 APR. 27, 2015  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 28th day of APR. 20 15

  
Deputy City Clerk

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

**OF**

**APRIL 24, 2017**

**A RESOLUTION DESIGNATING MOBILE LIFE SUPPORT SERVICES, INC.  
AS THE DESIGNATED PROVIDER OF EMERGENCY MEDICAL SERVICES  
FOR THE CITY OF NEWBURGH IN ACCORDANCE WITH THE TERMS OF  
AN AGREEMENT BETWEEN THE PARTIES AND AUTHORIZING THE  
CITY MANAGER TO EXECUTE A RENEWAL OF SAID AGREEMENT**

**WHEREAS**, by Resolution No. 73 - 2006 of April 10, 2006 the City of Newburgh entered into a contract with Mobile Life Support Services, Inc. ("MLSS") to provide Emergency Medical Services ("EMS") in and for the City of Newburgh; and

**WHEREAS**, by Resolution No. 68-2011 of March 28, 2011, the City of Newburgh renewed the contract with MLSS for an additional 2 year agreement; and

**WHEREAS**, by Resolution No. 59-2013 of March 25, 2013, the City of Newburgh renewed the contract with MLSS for an additional 2 year agreement; and

**WHEREAS**, by Resolution No. 99-2015 of April 27, 2015, the City of Newburgh renewed the contract with MLSS for an additional 2 year agreement; and

**WHEREAS**, the parties wish to designate MLSS as the provider of EMS for the City of Newburgh and renew the terms of said agreement for a one year term on condition that MLSS will continuously provide its resources sufficient to meet the EMS needs of the City of Newburgh and its citizens; and

**WHEREAS**, the City of Newburgh shall not be liable for any costs or expenses to MLSS in this regard; and

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

**WHEREAS**, the City Council has examined such agreement and determined it to be in the best interests of the City of Newburgh to enter into such 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 an agreement with Mobile Life Support Services, Inc. in the form attached hereto.

## **AGREEMENT FOR SERVICES**

**THIS AGREEMENT** is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the “**CITY**,” with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and **MOBILE LIFE SUPPORT SERVICES, INC. (“MLSS”)**, a firm with principal offices at 3188 Route 9W, New Windsor, New York 12553, hereinafter referred to as “**VENDOR**.”

### **ARTICLE 1. SCOPE OF WORK**

VENDOR agrees to perform the SERVICES identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement.

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

### **ARTICLE 2. TERM OF AGREEMENT**

VENDOR agrees to perform the SERVICES beginning April 1, 2017, and ending March 31, 2018.

### **ARTICLE 3. PROCUREMENT OF AGREEMENT**

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

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

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

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any

interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

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

#### **ARTICLE 5. INDEPENDENT CONTRACTOR**

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

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

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

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

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

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

This agreement may be assigned by the CITY to any corporation, agency,



municipality or instrumentality having authority to accept such assignment.

#### **ARTICLE 7. BOOKS AND RECORDS**

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

#### **ARTICLE 8. RETENTION OF RECORDS**

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

#### **ARTICLE 9. INSURANCE**

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

under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

<u>Type of Coverage</u>	<u>Limit of Coverage</u>
Worker's Compensation	Statutory
Employer's liability or similar insurance	\$1,000,000 each occurrence
Automobile liability	\$1,000,000 aggregate
Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
Comprehensive General Liability, including	\$1,000,000 aggregate
Broad form contractual Liability, bodily injury and property damage	\$2,000,000 each occurrence
Professional liability (If commercially available for your profession)	\$1,000,000 aggregate \$2,000,000 each claim

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

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided

on an “occurrence” basis. If any insurance is not so commercially available on an “occurrence” basis, it shall be provided on a “claims made” basis, and all such “claims made” policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR’S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

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

#### **ARTICLE 10. INDEMNIFICATION**

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

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

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

#### **ARTICLE 11. PROTECTION OF CITY PROPERTY**

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

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

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

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

#### **ARTICLE 12. CONFIDENTIAL INFORMATION**

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

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

#### **ARTICLE 13. TERMINATION**

The CITY may, by written notice to VENDOR effective six (6) months upon mailing and failure of VENDOR to cure within such six (6) month period, terminate this Agreement in whole upon the material default of VENDOR to comply with any of the terms or conditions of this agreement, or (ii) upon the VENDOR becoming insolvent or bankrupt.

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

#### **ARTICLE 14. NO ARBITRATION**

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

#### **ARTICLE 15. GOVERNING LAW**

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

#### **ARTICLE 16. ENTIRE AGREEMENT**

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

#### **ARTICLE 17. MODIFICATION**

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

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

THE CITY OF NEWBURGH

MOBILE LIFE SUPPORT SERVICES,  
INC.

BY: \_\_\_\_\_  
MICHAEL G. CIARAVINO,  
CITY MANAGER  
Per Resolution No.

BY: \_\_\_\_\_  
SCOTT WOEBSE  
VICE PRESIDENT & COO

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

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

Approved as to Form:

\_\_\_\_\_  
KATHRYN MACK  
City Comptroller

Approved as to Form:

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

**SCHEDULE A**  
**SCOPE OF SERVICES**



PROPOSAL TO PROVIDE  
**EMERGENCY MEDICAL  
SERVICES,  
RESPONSE AND TRANSPORT  
FOR THE  
CITY OF NEWBURGH**



SUBMITTED BY  
**MOBILE LIFE SUPPORT  
SERVICES, INC.**

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March 24, 2011

Mayor Nicholas Valentine, and  
Members of the City Council  
City Hall  
83 Broadway  
Newburgh, New York 12550

Dear Mayor Valentine and City Council Members:

This year Mobile Life Support Services will celebrate its 30<sup>th</sup> year of service to the City of Newburgh and communities throughout the Hudson Valley. Mobile Life Support Services was born on Dubois Street, and has continued to reinvest in itself and continued to grow, and has become a nationally recognized EMS agency of excellence. As a women-owned business, City of Newburgh property owner and taxpayer, I am extremely proud to be one of the City's success stories. I am also pleased that throughout the thirty years *we have never charged the City for the EMS coverage we provide, and we have no intention of doing so in the future.*

As our current contract expires on April 1, 2011, I would like to submit the attached EMS proposal for your consideration. This proposal is based upon a two (2) year agreement. I believe it will address any questions or concerns regarding our current and future performance as well as including some future initiatives including:

- A 911 Response Time *better* than the recognized national standard. If Mobile Life fails to achieve this standard, A penalty clause will be implemented.
- Creation of an Emergency Services Task Force
- Providing CPR training and defibrillators to the City in a Healthy Newburgh Program.
- Recruitment, training, and employment of eligible City residents for EMS careers.
- Becoming the lead sponsor for the annual Newburgh Night Out Against Crime.
- Detailed descriptions of the other ancillary services that we make available to the City.

I sincerely hope you will consider this proposal and grant us the opportunity to continue to serve the community where Mobile Life Support Services started three



decades ago. It might also be both helpful and educational for you to see first-hand the technology and people that are working behind the scenes to make sure that you have highly trained EMS professionals respond in a timely manner when and where you need them. I invite you to tour our facility at your convenience. Thank you.

In service,

Gayle Metzger RN, BA  
President and CEO  
Mobile Life Support Services, Inc.

Proposal to Provide

Emergency Medical Services  
(EMS)  
For the  
City of Newburgh

Proposal to Provide  
Emergency Medical Services (EMS)  
For the City of Newburgh

Under this two (2) year proposal, Mobile Life Support Services (MLSS) would offer the City of Newburgh the following services that would provide a state-of-the-art, comprehensive Emergency Medical Service (EMS) Plan of coverage to the City and its residents *at no cost to the City*.

Emergency 911 EMS Coverage

MLSS will provide a minimum of two (2) fully equipped and staffed Paramedic Ambulances dedicated to covering all 911 EMS calls originating in the City of Newburgh twenty-four (24) hours a day. In addition, when emergency call volume arises that exceeds the ability of these units to respond without delay to a 911 call, additional on-duty Paramedic ambulances located in the City will be utilized to either respond to the scene or to standby to await additional calls.

Stand-by Coverage

MLSS will provide additional staffed Paramedic Units to be utilized on approved stand-by assignments within the City, and will not utilize the dedicated units for these assignments. In addition, MLSS will provide the resources of our *Special Operations Response Teams (SORT)* and *Tactical Emergency Medical Services (TEMS)* teams for deployment in the City without cost. Additional information on these units is covered later in this proposal. Standby Coverage might be for a single incident such as a working structure fire, or for City sponsored multi-day events at the waterfront, public safety emergency incidents, and events sponsored by local non-profit agencies. While MLSS will provide no-cost coverage to local community agencies for appropriate events they host that require EMS to be present, private for-profit concerns requiring such coverage will be billed for the cost of the required EMS coverage.

Response Time Criteria

MLSS does not delineate response time criteria on 911 EMS Emergency calls based upon the designations of ALS or BLS. Emergency (Code 3) responses all are held to the same response time criteria. MLSS does recognize the national guidelines of "ALPHA" response calls, which are non-life threats which do not require an emergency response, but do require medical evaluation and possible non-emergency ambulance transportation. This is done to minimize the risk to both EMS responders and the general public caused by an unnecessary emergency response. With this clarification to the RFP criteria, we propose the following:

- Response time: MLSS will adhere to a response time criteria of seven (7) minutes (defined as 0:07:59) in at least 90% of all emergency responses (excluding "ALPHA" responses). Said response time is from the assignment of the 911 call to MLSS until the arrival of a MLSS unit on the scene of the emergency call. This exceeds the nationally accepted response time criteria of eight (8) minutes (0:08:59)

- **Penalty:** MLSS agrees to compensate the City of Newburgh in the amount of \$1,000.00 per percentage point below the monthly 90% response time performance criteria of seven (7) minutes. For example: If the monthly response time performance averages only 88% of the 911 EMS calls, minus "ALPHA" responses, MLSS would pay the City a penalty of \$2,000.00 for that month.
- **Exceptions to response time and penalty commitments:** While MLSS has every intention to meet the criteria identified above, we will do so without putting either the MLSS staff or the citizens of the City of Newburgh at risk due to inappropriate emergency responses during weather conditions and situations beyond our control. This can include environmental issues such heavy rain, snow, ice, fog, or flooding conditions, or due to road closings or similar conditions affecting route of travel. Exceptions to the response time criteria will also apply to when the two (2) dedicated ambulances are already on 911 EMS calls in the City and additional units from our fleet will be reassigned to cover additional calls. Should the aforementioned conditions have a negative effect on the response time criteria or penalties, MLSS shall advise the City of the situation and petition for an appropriate exemption.
- **Response Time reporting and tracking:** While MLSS will submit a response time performance report each month for the determination of adherence to the response time criteria and for the assessment of penalties (if appropriate), the City may request the live-time documentation of any selected 911 responses in question. All MLSS ambulances are equipped with Automatic Vehicle Locators (AVL) and their movements are tracked live-time while being digitally recorded for archiving. In addition, communication between the Emergency Dispatch Center and the ambulances is also digitally recorded and archived.

#### Certifications:

MLSS is a certified Ambulance service under the New York State Department of Health's Bureau of Emergency Medical Services, and is credentialed by the Hudson Valley Regional Emergency Medical Services Council (HVREMSCO) as an Advanced Life Support Paramedic Service. All MLSS EMS Staff are certified by NYS at either the Emergency Medical Technician (EMT) or Emergency Medical Technician-Paramedic (EMT-P) level of care.

MLSS is also *Nationally Accredited by the Commission on the Accreditation of Ambulance Services (CAAS)*, and is the only privately owned service to qualify for this highest level of distinction in New York State. Additional information about CAAS is provided in this proposal.

# 2010 EMS CALL MAPPING

CITY OF NEWBURGH

0.5 1 1.5 2

## Proposal Pricing

### Proposal Pricing:

Mobile Life Support Services would provide the dedicated E-911 Emergency Medical Services (EMS) for the City of Newburgh with no municipal fee or subsidy for the life of the agreement. The City of Newburgh would not be financially responsible for any uncollected patient invoices or bad debt, and will have no fiduciary responsibility in the housing or operation of the EMS services provided by Mobile Life Support Services.

That Mobile Life Support Services will provide documentation of system performance on a monthly basis and will provide administrative support to representatives of the City of Newburgh to continuously improve the services provided to the citizens of the City, and the preparedness of the City to handle all emergencies it may face.

This proposal also includes the continuation of our existing understanding that the transportation and treatment of anyone in the custody of the Newburgh Police Department and the transportation and treatment of any City officers and employees while at work shall be transported to the hospital at no expense to the City of Newburgh. MLSS reserves the right to bill the patient or their insurer as the financially responsible party for services rendered.

### Penalties:

Mobile Life Support Services will pay the City of Newburgh a penalty in the amount of \$1,000.00 per percentage point per month that we fail to provide the nationally recognized response time performance of seven (7) minutes (0:07:59) in 90% of all 911 EMS emergency calls (excluding non-emergent "ALPHA" responses), as identified previously in this Proposal.



## City of Newburgh Initiatives

## City of Newburgh Initiatives

Mobile Life Support Services, as part of our continuing effort to support our local communities, would like to propose three specific initiatives crafted specifically for the City of Newburgh. These initiatives target the safety and health of those who live, work, and visit the City, and a few of the initiatives can also reduce expenditures the City now funds. All of these initiatives would require coordination between representatives of the City and MLSS, as follows:

### Initiative: City of Newburgh Emergency Services Task Force

Under this initiative MLSS would propose that we work with the City leaders and the heads of the various City Emergency services to establish a Task Force that would meet at least monthly to discuss and plan for the effective delivery of all emergency services throughout the City. While MLSS through our SORT and TEMS teams provides emergency support services to the City Police and Fire Departments, a more comprehensive pre-plan for how emergency incidents are handled in the City would benefit all departments and the City collectively. This would aid in planning for large events to be held in the City; emergency conditions secondary to severe weather conditions, incidents of large public gatherings, or similar incidents and conditions.

### Initiative: A Heart Healthy Newburgh

Under this initiative we would utilize a grant provided by Mobile Life Support Educational Resources (MLSER), Inc., a not-for-profit 501-C3 foundation started by MLSS for community education endeavors. The grant would be used to improve survivability of cardiac arrest victims in the City of Newburgh, and would include:

- The training of any/all City employees, designated by the City, in the current standards and techniques of performing Cardiopulmonary Resuscitation (CPR), and the use of an automated electronic defibrillator (AED) to defibrillate cardiac arrest victims.
- Outfitting of all trained personnel with individual pocket face-masks for use during CPR, which would protect them from any possible infection.
- The purchase and deployment of AED's into City owned and operated buildings and properties, subject to discussions with the City and the formation of a Healthy Newburgh Action Plan. This will be limited to one (1) AED per contract year.
- Recertification training of all CPR-AED Certified personnel every two years.
- MLSS would coordinate with St. Luke's Cornwall Hospital, the Greater Newburgh Health Center, and the American Heart Association for public education and awareness of Heart Disease and stroke related issues, and the need for good preventive health.

#### Initiative: Recruitment and Training of Eligible City Residents for Careers in EMS

Under this initiative MLSS would work with representatives of the City, Community Agencies, and Faith-Based Organizations, to identify qualified City residents as candidates to receive free EMS career training and eventual employment as a NYS certified Emergency Medical Technician (EMT). The elements of this specific initiative include:

- Identifying the various stakeholder organizations to participate in a committee for the purpose of the recruitment of qualified candidates.
- Interviewing and evaluating qualified City residents applying for the training opportunity.
- Enrollment of up to five (5) eligible candidates into the certified EMT programs conducted locally each semester by MLSS. This would include additional mentoring of identified students to help them to successfully meet all NYS requirements.
- Providing that the eligible candidates meet the criteria established, they will be hired as an intern at MLSS and receive compensation while they secure EMS experience assigned to a MLSS Ambulance team pending the completion of their NYS Certification process.
- Upon receiving their NYS EMT Certification, and providing all other MLSS employment qualifications are met, the candidate will be offered a full-time EMT position with MLSS. The successful candidate will be compensated as a NYS Certified EMT and receive a paid benefit package, including family health insurance, from MLSS.

#### Initiative: Lead Sponsor for the Newburgh National Night Out Against Crime

While MLSS has supported the National Night Out Against Crime throughout our service area, we were struck by the plight that the planners faced in 2010. It appeared that the event may have had to be scaled down or possibly cancelled when they were faced with a dramatic reduction in donations used to fund the event. While MLSS stepped in as the lead sponsor on an emergent basis in 2010, we are proposing that, in addition to the other charitable organizations we support in the Newburgh Community, that we will dedicate the funds necessary to be the lead sponsor for the event for the duration of our partnership with the City as their EMS provider. MLSS will coordinate with the planners of the event to establish the required amount to budget for funding each year. We recognized a similar problem a number of years ago, seeing the funding difficulties faced by the Greater Newburgh YMCA and their Camp Robbins. It led us to become a corporate supporter for the YMCA, and today we remain a leading corporate sponsor for the Greater Newburgh YMCA. We view these as investments in the youth of Newburgh.

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## ADDITIONAL INFORMATION

## Company Information

- Corporate Profile; Administrative Staff; Table of Organization
- National Accreditation by the Commission on Accreditation of Ambulance Services (CAAS)
- Mobile Life Support Services Emergency Communication Center
- Special Operations Response Team (SORT)
- Tactical Emergency Medical Services (TEMS) Team
- NYSP Lifeguard Air Rescue
- Mobile Life Support Services Educational Services
- Continuous Quality Improvement (CQI) Program
- References



MobileLife Support Services, Inc.



## Corporate Profile

The following information sheet will help to familiarize you with Mobile Life Support Services, Inc., and provide you with relevant information about the scope of the services provided.

Legal Corporate Name: Mobile Life Support Services, Inc.

Corporate Headquarters: 3188 Route 9W  
New Windsor, New York 12553

Contact Information: Telephone: (845) 562-4368  
Fax: (845) 562-4055  
E-Mail: [Mail@Mobilelife.com](mailto:Mail@Mobilelife.com)  
Website: [www.Mobilelife.com](http://www.Mobilelife.com)

Type of Business: Commercial Paramedic Ambulance Service

Certified by: New York State Department of Health Bureau of EMS

National Accreditation: The Commission on Accreditation of Ambulance Services (CAAS)

Owner: Gayle Metzger RN, President and CEO

Founded: 1981 By Gayle and Rick (deceased) Metzger in Newburgh, N.Y..

Area of Operation: Orange, Ulster, Dutchess, and Rockland Counties

Current Employment: 374 Full and Part Time Staff

Emergency Vehicles: 60

Emergency Stations: 21 (See attached map)

Services Provided: Comprehensive EMS Operations and Training

- ☐ 911 Emergency Paramedic Ambulance (47 Ambulances)
- ☐ Paramedic First Response Services (5 Response Units)
- ☐ Emergency and Non-Emergency Ambulance Transportation (Hospitals & Nursing Facilities)
- ☐ Special Operations Response Team (SORT) (3 Units)
- ☐ Tactical Emergency Medical Services (TEMS) Team
- ☐ HAZMAT Response with Orange and Ulster County
- ☐ Helicopter Medevac with NYSP Aviation (*LIFEGUARD-17*)
- ☐ Emergency Communications Center (Secondary 911 PSAP)
- ☐ Leased staffing of Volunteer Ambulance Services

- ☐ Special Event EMS Planning and Operations
- ☐ Disaster Planning and Training Programs
- ☐ Emergency Medical Services Training Division
- ☐ Community CPR and First Aid Training
- ☐ Medical Billing Services

Communities Served:

Provides Primary 911 Services to the following communities:

- ☐ City of Newburgh
- ☐ City of Middletown
- ☐ City of Kingston
- ☐ Village of Fishkill
- ☐ Village of Wappingers Falls
- ☐ Town of Newburgh (New Hamburg Ambulance District)
- ☐ Town of Fishkill (Ambulance District No. 1)
- ☐ Town of Lloyd
- ☐ Town of Marlborough
- ☐ Town of Ulster
- ☐ Town of Wawayanda
- ☐ Town of Rosendale
- ☐ Town of Otisville/Mt. Hope

Provide Paramedic and Mutual Aid Services to the following communities:

- ☐ Town of Newburgh
- ☐ Town of Cornwall
- ☐ Town of Highlands
- ☐ Town of Montgomery
- ☐ Town of Crawford
- ☐ Town of Wallkill
- ☐ Town of Goshen
- ☐ Town of Hamptonburgh
- ☐ Town of Chester
- ☐ Village of Florida
- ☐ Town of Monroe
- ☐ Town of Woodbury
- ☐ Town of Fishkill
- ☐ Town of East Fishkill
- ☐ Town of Marlborough
- ☐ Town of New Paltz
- ☐ Town of New Windsor
- ☐ Town of Plattekill
- ☐ Town of Rochester
- ☐ Hamlet of Wallkill
- ☐ Town of Shawangunk

Yearly Call Volume:

Over 70,000 calls per year

## Mobile Life Support Services Administrative Team

The following is a brief list of the MLSS Administrators. An addendum has been included which includes a more expansive bio on each Administrator that we use in our Staff Orientation Program, as well as our current Organizational Chart.

Gayle Metzger	President and Chief Executive Officer
Scott Woebse	Vice-President and Chief Operating Officer
Edward Horton	Vice President of Staff Development
Timothy Scannell	Chief Financial Officer
Andrew La Marca	Director of Business Development
Kevin Hayes	Director of Logistics
Richard Miller	Director of Operations
William Jeffries	Director of Staff Development

Note: These eight Administrators have a total of 163 years of experience with Mobile Life Support Services, and collectively over 200 years in the EMS Industry.





**Kevin Hayes**

Kevin started his emergency services career with the Coldenham Fire Department which sponsored him his original EMT course. He was trained at Horton Hospital under the instruction of Andy LaMarca. He joined Mobile Life in July 1987 as an EMT and in 1989 graduated from the Dutchess Community College Paramedic Program. He also worked as a Respiratory Therapist at St. Luke's Hospital. Kevin progressed through the ranks of Mobile Life serving as a Dispatcher, Paramedic, Senior Paramedic and Paramedic Supervisor. In 1998 Kevin was promoted to Assistant Director of Field Operations and then to Director of Field Operations in 2000. Since 2002 Kevin has been functioning as the Director of Logistics, overseeing the Information Technology, Equipment, Vehicles and the company's infrastructure. Kevin resides in Montgomery and is the proud father of 2 daughters. Kevin can be reached at 845-562-4368 ext. 208 or [khayes@mobilelife.com](mailto:khayes@mobilelife.com)



**Richard Miller**

Rich first joined the Mobile Life team in 1988 as an EMT. Having inherited a penchant for clinical excellence from his father (who has been a Paramedic since 1985) Rich spent many years as a clinician, educator and manager of emergency medical systems. Currently, Rich is the Director of Field Operations for MLSS. As such he is responsible for day to day management and coordination of the MLSS system. Before being promoted to Director of Field Operations he previously served as a Paramedic Field supervisor and Assistant Director of Operations for MLSS. He is the proud father two young children and resides in Montgomery. Rich can be reached at 845-562-4368 ext. 246 or [miller@mobilelife.com](mailto:miller@mobilelife.com)

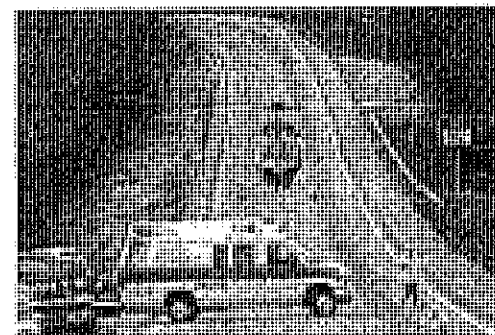


Mobile Life Support Services, Inc.  
Corporate Headquarters  
3188 Route 9W  
New Windsor, NY 12553



**MLSS**

*Mobile Life Support Services*



*GARY HORTON*

Chief Executive Officer  
*Scott Woebse*  
VP /Chief of Operations  
*Edward Horton*  
VP of Staff Development  
*Timothy Scannell*  
Chief Financial Officer  
*Andrew LaMarca*  
Director of Business  
Development  
*Kevin Hayes*  
Director of Logistics  
*Richard Miller*

Tel: 845-562-4368



### Gayle Metzger

Gayle Metzger first became an EMT in 1976 with the New Paltz Rescue Squad. She loved the field of EMS and began working for a private ambulance company as well. In 1980 she married Rick Metzger and took a Level III (Critical Care Technician) class. In 1981, she and Rick incorporated Mobile Life Support. Gayle established the billing department, did most of the creative work (including design of the MLSS patch and Paramedic patch) dispatched, and was the "fast crew out" most days and almost every night of the week. Gayle holds an AA degree in Social Science from Ulster Community College, a BS in Psychology from SUNY New Paltz and an RN from Dutchess Community College. She is the author of "Kid-Care, What to do until the Ambulance Arrives" for parents and babysitters, and in 1987 she authored and coordinated a program for Paramedics titled "Mobile Intensive Care Paramedic" which taught Paramedics many Critical Care Nursing skills. The program, in a modified form, is still being taught today. In 1999, upon Rick's sudden death, she took over as President and CEO of Mobile Life Support Services, Inc. She lives in Montgomery with her dad and 2 bloodhounds, Jonah and Dixie. She can be reached at 845-4368, ext. 203 or [GMetzger@mobilelife.com](mailto:GMetzger@mobilelife.com) or on [www.myspace.com/MobileLifesupportservices](http://www.myspace.com/MobileLifesupportservices)



### Scott Woebse

Scott is the Vice President / Chief Operations Officer and a member of the Board of Directors of Mobile Life. As Gayle's "right hand" he oversees all operational aspects of Mobile Life. He first joined the Mobile Life team in 1985 as a Paramedic. Before assuming his current post of Chief of Operations, he previously served as a Supervisor, Director of Air-Medical Services, and Director of Human Resources for MLSS. Scott pioneered Advanced Life Support in the New Paltz area of Ulster County and has a long and distinguished history of leadership in EMS throughout the Hudson Valley. He spearheaded the first EMS Flight and Air Rescue Program with the New York State Police in 1994 and continues to provide operational oversight to the Lifeguard Air Rescue program in the Hudson Valley. An expert in system status management, Scott has been instrumental in bringing advanced procedures, system status and resource allocation to the forefront of EMS in the Hudson Valley. Scott resides in New Paltz with his wife and two teenage children. Scott can be reached 845-562-4368 ext 206 or [swoebse@mobilelife.com](mailto:swoebse@mobilelife.com).



### Edward Horton

Ed Horton is the Vice President in charge of Staff Development for Mobile Life Support Services, Inc. In this capacity, he is a member of the MLSS Board of Directors and is administratively responsible for the areas of Human Resources, Quality Improvement and EMS Education. He is also the designated Controlled Substances Agent. Prior to joining the MLSS management team in 1997, he held various administrative and clinical positions in the public, hospital-based, not-for-profit and private sectors of EMS. Ed is a NYS EMS CIC and Regional Faculty member. He is a certified instructor of ACLS, PALS, PHTLS and AMLS. He is actively involved with the Hudson Valley Regional EMS Council and has held various officer positions with that organization since 1980. He is the 1997 recipient of the New York State EMS Council's EMS Leadership Award. He holds a NYSDOH certificate as an EMT-Paramedic and has a Bachelor of Science degree in Nursing and is licensed as a Registered Professional Nurse in the State of New York. He has been involved in EMS since 1974. Ed can be reached at 845-562-4368 ext 242 or [ehorton@mobilelife.com](mailto:ehorton@mobilelife.com).



### Timothy Scannell

Born and raised in the Hudson Valley, Tim started his EMS career as a member of the Philipstown VAC in 1986. He joined Mobile Life as an EMT in 1993 after graduating from Northeastern University and working two years at Bankers Trust Co. in New York. He has held various positions at MLSS including Paramedic, Flight Paramedic, Field Supervisor, and Comptroller. He has been Chief Financial Officer since 2005. He is responsible for all financial aspects of Mobile Life Support. Specifically, he serves as Trustee for the 401k plan, is responsible for the billing office, participates in contract design and negotiation, and manages Mobile Life's insurance policies and banking relationships. Tim resides in the Hamlet of Walkkill with his wife Jennifer and daughters Samantha and Sydney. Tim can be reached at 845-562-4368 ext 222 or [tscannell@mobilelife.com](mailto:tscannell@mobilelife.com).



### William Jeffries

William began his EMS career as a junior volunteer at the age of 16. While attending college at SUNY New Paltz, he worked nights as an EMT for MLSS to pay for tuition. He completed Paramedic training at Dutchess College where he now holds an Adjunct Faculty position. Will "grew up" in the Mobile Life system serving in the positions of EMT, Paramedic, Flight Paramedic, and Field Supervisor from 1995-2002. Will spent two years serving as the Regional Training Coordinator for the Hudson Valley. He has also previously held management positions

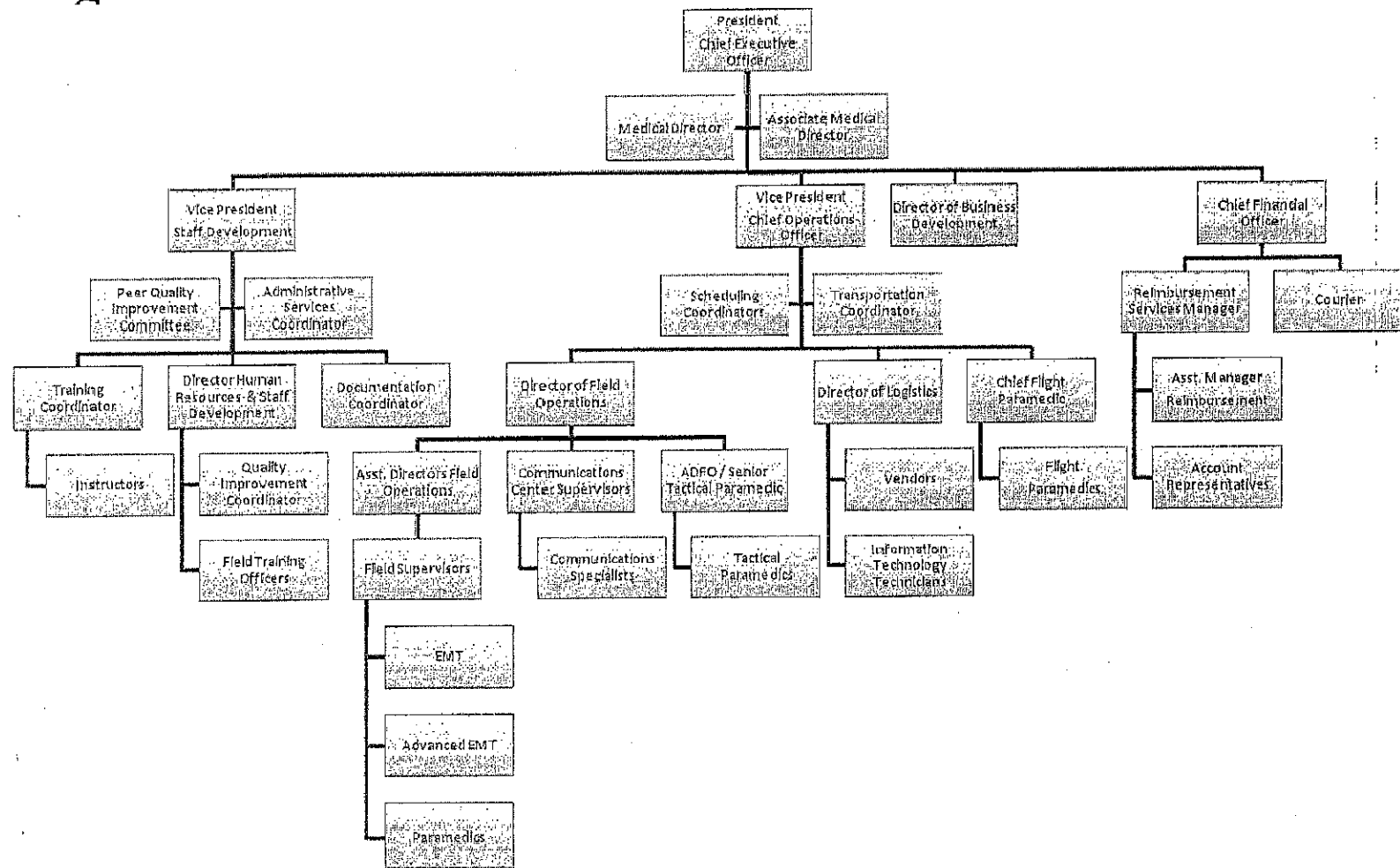
in Quality Assurance, Operations, and Training in NYC. In the fall of 2006, Will returned to his roots at MLSS and became the newest and youngest member of the administrative team. As Director of Staff Development, Will assists the two Vice Presidents in numerous projects; specifically he's responsible for hiring, personnel management, quality improvement, benefits coordination, policy development and orientation of new staff. William can be reached at 845-562-4368 ext. 224 or [wjeffries@mobilelife.com](mailto:wjeffries@mobilelife.com).



### Andy LaMarca

Andy La Marca started his career in EMS by helping to form a volunteer ambulance service in Staten Island in 1972 even before he became an EMT. He was trained as an EMT, EMT Instructor, and subsequently as Paramedic at Beekman Downtown Hospital in their first Paramedic Course, before becoming the EMS Director there in 1977. In 1979 he became the Pre-Hospital Emergency Care Coordinator to run both the Ambulance Service and all EMS Programs at Horton Hospital. In 1991, MLSS agreed to assimilate the Horton Ambulance into its operations and opened its' Middletown Station. Andy became the Director of Development and a Paramedic Supervisor at MLSS. Andy is a NYS Regional Faculty Member for the Department of Health, and a longstanding BCLS/ACLS/PALS instructor, faculty member, and volunteer for the AHA. He is a Delegate from the Orange County EMS Council, the Hudson Valley Regional EMS Council, and is the HVREMSCO Delegate at the New York State Emergency Medical Services Council (SEMSCO), where he is the Chair and serves on a number of Committees and Technical Advisory Groups (TAGs). Andy is the current Chairman of the United New York Ambulance Network (UNYAN) which represents the commercial ambulance services in NYS. Andy lives in Greenville (Orange County), has been married to his wife Nancy for 32 years, and has two grown children. Andy can be reached at 845-562-4368 ext 205 or [alamarca@mobilelife.com](mailto:alamarca@mobilelife.com)

# Mobile Life Support Services Organizational Chart



## National Accreditation

In 1995 the Administration of Mobile Life Support Services decided to voluntarily undergo the outside evaluation of the Commission on Accreditation of Ambulance Services (CAAS). Universally recognized in the EMS industry, CAAS Accreditation epitomizes the "*Gold Standard*" in the delivery of EMS in the United States and Canada. In order to be considered for National Accreditation, each service must ensure that they document and submit all of their internal policies and procedures that cover for example:

- Corporate Organization
- State Certifications
- EMS Operations
- Quality Improvement
- Education and staff development
- Communication Center Operations
- Response Time Performance
- Community Involvement

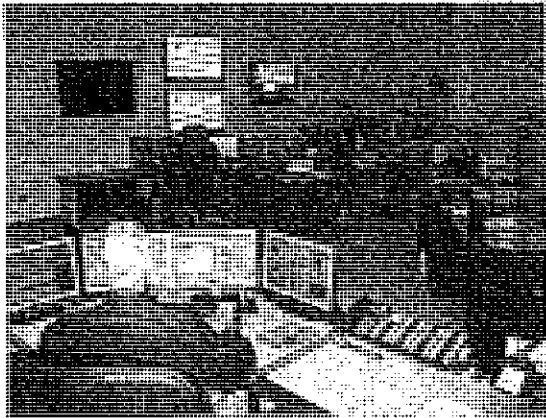


Once this application reaches the CAAS reviewers, they thoroughly analyze each aspect of the applicant's response, and if acceptable they will schedule a three (3) day on-site audit with a team of independent CAAS reviewers. The typical CAAS audit team is comprised of a Medical Doctor specializing in Emergency Medicine, an EMS Administrator, and a third reviewer with a background in finance and accounting. During their on-site audit the reviewers dictate what they wish to review and who they wish to speak with. Typically they will select EMS staff at random to ensure they are cognizant of the company's policies and procedures, and will meet with the company's Medical Director to verify his/her involvement and oversight. They also interview local hospital representatives, other emergency service agencies, and municipal representatives to evaluate the applicant's overall performance. The review team is not allowed to provide any indication to the applicant of the overall results of the audit, but instead present their findings to the CAAS Board of Commissioners for review. Periodically throughout the year the Board reviews these findings and renders a decision on whether to Accredite the agency or not.

In 1996 we received notice that we were granted National Accreditation, which at that time was only granted to less than 100 EMS agencies. Every three years we must re-apply and undergo the same process. We are proud to say that we have maintained the "Gold Standards" of CAAS ever since we received it, scoring a perfect score without any deficiencies in our last review. There are still only 120 EMS Agencies CAAS accredited.

Our staff is proud to wear the CAAS logo on our uniforms and to display the Accreditation seal on our vehicles. More importantly, those we serve have the assurance of knowing that they are being cared for by some of the best EMS professionals throughout the United States and Canada, and by a company that strives for excellence.

## Emergency Communications Center (ECC)



### Mission

The MLSS Emergency Communication Center (ECC) is responsible for the coordination and dispatching of all MLSS ambulances and emergency response teams to both Emergency 911 EMS calls and to non-emergency requests for service. The ECC is a secondary Public Service Answering Point (PSAP) for the Orange County 911 Communication Center, and is linked via telephone and radio to both the Ulster and Dutchess County Emergency Communication Center.

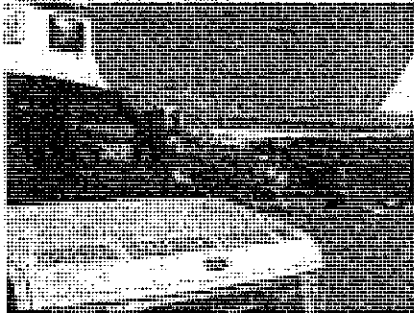
### Equipment

The MLSS ECC is configurable to support up to seven (7) dispatchers at their own individual dispatch desks. They use a Computer Aided Dispatch (CAD) system that tracks critical dispatch information, data, and response times. Each station is equipped to operate on multiple VHF and UHF radio frequencies and landlines. The ECC is equipped with both battery back-up and an automatic emergency generator capable of supplying uninterrupted power and with a bank of cellular telephones that can be immediately utilized should the landline telephones experience service interruptions. The ECC transmits dispatch information to the responding crew via radio, while simultaneously transmitting the call information to the responding crew's portable computer, which is used to generate the electronic patient care record. Each ambulance is equipped with its own internet WiFi that enables this data transmission between the ECC and ambulance, and also enables the ambulance to transmit medical information and patient EKG data to the receiving hospital.

The ECC is equipped with a digital recording system that records all telephone and radio traffic that passes through the dispatch center, and archives it for future retrieval if necessary. The ECC is also able to track all on-duty units by means of their automatic vehicle locator (AVL) system, which provides the live-time tracking and status of every MLSS emergency vehicle in operation, and project them on each Dispatchers computer monitor as well as on a large map in the ECC. This uses satellite global positioning system technology and updates itself every six (6) seconds.

The ECC also utilizes the nationally approved Priority Medical Dispatching System to provide pre-arrival emergency medical instructions to a 911 caller in order to assist patients until the arrival of the ambulance.

## Special Operations Response Team (S.O.R.T.)



### Mission

To provide specialized emergency medical support for the following types of incidents:

- Multiple Casualty Incidents (MCI)
- HAZMAT Responses
- Fire ground Firefighter Rehab
- Mass Gathering Events (Planned/Unplanned)
- Medical Facility Evacuations

### Equipment

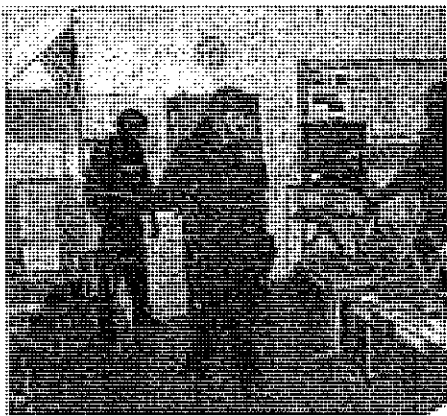
MLSS operates three (3) SORT vehicles, currently deployed for response in the Cities of Newburgh, Middletown, and Kingston. Should MLSS be designated as the EMS responder for the City, a SORT unit will be stationed in the City of Newburgh. Each SORT vehicle is equipped with:

- Bulk medical and trauma supplies
- Portable stretchers and backboards
- Portable chairs
- Portable tents
- Fluid/electrolyte replacement solutions
- Drinking water
- Ice chests
- Cooling/misting fans
- Blankets and towels
- Portable radios
- Extra oxygen tanks

### Personnel

MLSS has trained in excess of 75 SORT team members, available for 24/7 emergency recall, to operate the SORT vehicles, supplies, and equipment. SORT members carry MLSS electronic pagers that can be utilized to dispatch them directly to the scene of an incident if necessary, or to one of the MLSS emergency stations to secure additional supplies or vehicles should such be necessary.

## Tactical Emergency Medical Services (TEMS) Team



### Mission

To provide Advanced Life Support (ALS) Emergency Medical Care to Law Enforcement officers and the general public when deployed in support of:

- Special Weapons and Tactics (SWAT) Teams
- Special Entry Teams
- Active shooter situations
- Hostage situations
- High Risk Warrant Execution/Searches

### Equipment

Each TEMS Paramedic Team member is equipped with ballistic body armor and a ballistic helmet, along with an abbreviated set of ALS supplies and equipment. The equipment is designed for portability and mobility, and specifically targets the treatment of traumatic/ballistic injuries. The equipment and supplies are selected to allow the TEMS team to provide ALS care for an extended time period should they be unable to safely evacuate casualties while under fire.

### Personnel

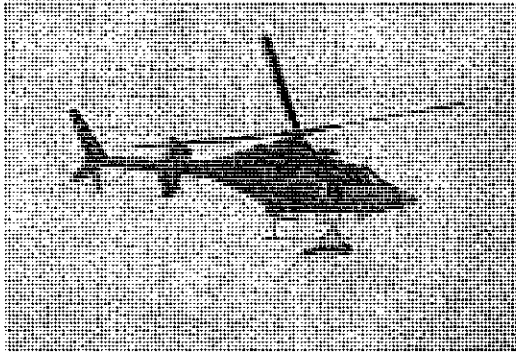
Prospective MLSS TEMS team members must meet eligibility requirements covering experience as a paramedic, clinical proficiency, and supervisory references, before undergoing multiple internal interviews. Candidates that are selected are either enrolled in a Federally approved TEMS Training program, or if that is not available, by an in-house TEMS training program utilizing the national curriculum. TEMS team members participate in monthly drills, and can be recalled while off-duty for an active deployment.

TEMS team members are unarmed, and can only function at the direction of the law enforcement team they are deployed to support.

Note: The MLSS TEMS team already has an agreement and with the City of Newburgh Police Department, and has deployed with them numerous times.



## Lifeguard Air Rescue



### Mission

To provide emergency on-scene advanced life support medical treatment of critically ill or injured patients, and to evacuate them by helicopter directly to a tertiary care hospital. This cooperative program, which we initiated in 1994, utilizes the New York State Police Helicopters and pilots stationed at Stewart International Airport, and Flight Paramedics provided by Mobile Life Support Services. In addition to providing routine medevac services, Lifeguard is equipped with a hoist that the Flight Paramedics can use to rescue and extricate patients in environments where the helicopter cannot land. Lifeguard is also tasked to provide standby logistics and medical support during special operations and events. One of five (5) such programs statewide, the Stewart-based program is the most active.

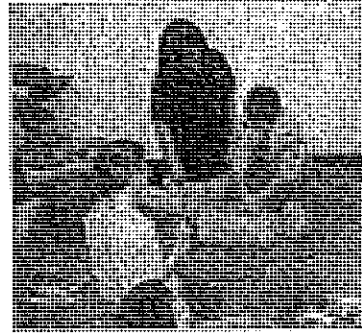
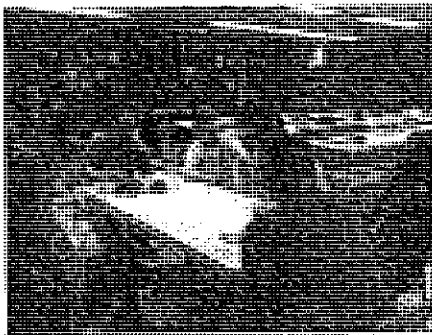
### Equipment

The NYSP utilize a twin engine Bell 430 as the primary Lifeguard unit, and utilize a second single engine Bell 407 as a backup craft. Each is outfitted with a full set of ALS equipment along with a hoist and evacuation devices. The helicopters are equipped with forward looking infrared (FLIR) systems to aid them during night flights and limited visibility situations, and aids them in being able to locate individuals on the ground.

### Personnel

Potential Mobile Life Support Flight Paramedic candidates must meet stringent prerequisites covering experience; skills proficiency; assessment skills; ability to work under pressure; and then must pass two mandatory interviews by a review team. Before receiving Flight Training, each candidate must be vetted by the New York State Police, and if approved can then be put into the training and orientation programs. Flight Paramedics are then scheduled to cover all scheduled hours of operation of Lifeguard and are physically located at the NYSP Aviation unit at Stewart International Airport, available for immediate response.

## Mobile Life Support Services EMS & Community Education Division



### Mission

The MLSS Education Division has three primary missions:

- A. To provide on-going MLSS staff education and certifications.
- B. To provide high-quality EMS education and certification to local EMS, Police, and Fire Departments who require such training.
- C. To provide Community based programming in First Aid, CPR, and numerous health and safety related subjects.

### Accreditations

The MLSS Education Division is credentialed by the following agencies to conduct programming:

- A. The New York State Department of Health Bureau of EMS:
  - Certified First Responder (CFR) Original and Refresher Programs
  - Emergency Medical Technician (EMT) Original and Refresher Programs
  - Emergency Medical Technician-Intermediate (EMT-I) Original and Refresher Programs
  - Emergency Medical Technician-Critical Care (EMT-CC) Original and Refresher Programs
  - Emergency Medical Technician-Paramedic (EMT-P) Refresher Program Only.
  - Continuing Medical Education (CME) Refresher Training – Conventional and Internet Based Programs
- B. The American Heart Association
  - Basic Life Support (BLS) CPR – All original and refresher programs
  - First Aid and CPR – All original and refresher programs
  - Advanced Cardiac Life Support (ACLS) Original and Refresher Programs
  - Pediatric Advanced Life Support (PALS) Original and Refresher Programs
- C. The National Association of Emergency Medical Technicians (NAEMT)
  - Pre-Hospital Trauma Life Support (PHTLS)
  - Advanced Medical Life Support (AMLS)

#### D. Coaching Systems: Coaching the Emergency Vehicle Operator (CEVO)

##### Personnel

The MLSS Education Division is comprised of over forty (40) instructors and instructor trainers, credentialed to teach either individual or multiple certification level programs. Each year they train over 500 members of local emergency service agencies, and over 1100 members of the community. Many of the instructors are full-time Paramedics and Emergency Medical Technicians with MLSS and their EMS experience greatly adds to their efficacy as instructors.

## Continuous Quality Improvement (CQI) Program

Mobile Life Support Service is committed to providing the highest quality of emergency patient care, and a key element of that commitment is to ensure that we closely monitor our overall quality through a number of key indicators, or benchmarks. These benchmarks have been established and monitored over the years, and has led to continuous service improvements that continue today. Some of the benchmarks we monitor are:

- Response time performance
- Patient contact time
- Medical assessments
- Adherence to medical protocols and treatment
- Advanced Life Support skills proficiency
- Controlled substance utilization and documentation
- Medical control contact

The MLSS Medical Director, Anthony Ruvo M.D., and Associate Medical Director, Anuj Vohra, provide system-wide oversight for our Quality Improvement Committee and our full time Quality Improvement Coordinator. The QI Committee meets weekly, and is comprised of MLSS Paramedics, Emergency Medical Technicians (EMT), Administrators, and the QI Coordinator, and provides a peer review on all calls. The QI Coordinator is responsible for the daily review and monitoring of all calls, and to formulate remediation plans to address any specific or general area of concern identified in the CQI process.

In 2009, MLSS implemented an electronic patient recordkeeping system, which takes live-time data transmitted from the MLSS crews in the field by hand held computers. This data is immediately accessible by the QI Coordinator, and the electronic records enable MLSS to analyze system and individual performance to identify any corrections that need to be enacted, or any continuing medical education (CME) that our staff may require to provide the highest quality of patient care.

## References



Mobile Life Support Services, Inc.



### References – Corporate

John Klassen, Assistant VP  
M & T Bank  
56 Route 17K  
Newburgh, New York 12550  
(845) 562-8554

Thomas DiGiovanni, Partner  
Vanacore, DeBenedictine, DiGiovanni  
& Weddell, LLP  
11 Racquet Road  
Newburgh, New York 12552-9228  
(845) 567-9000

Trish Fisher, President and CEO  
Greater Newburgh Y.M.C.A.  
377 Broadway  
Newburgh, New York 12550  
(845) 562-1088

Allan Atzrott, President and CEO  
St. Luke's Cornwall Hospital  
70 Dubois Street  
Newburgh, New York 12550  
(845) 568-2222

John Fracasse, Assistant VP  
Orange County Trust Company  
376 Windsor Highway  
Vails Gate, New York 12584  
(845) 568-5501

Richard Drake, Esq., Senior Partner  
Drake, Loeb, Heller, Kennedy, Gogerty,  
Gaba, and Rodd  
555 Hudson Valley Avenue  
New Windsor, New York 12553  
(845) 561-0550

Dr. John D'Ambrosio  
Orange County Chamber of Commerce  
30 Scott's Corner Drive  
Montgomery, New York 12549  
(845) 457-9700

### References – Municipalities

Mayor Joseph De Stefano  
City of Middletown  
16 James Street  
Middletown, New York 10940  
(845) 346-4100

Mayor James Sottile  
City of Kingston  
420 Broadway  
Kingston, New York 12401  
(845) 331-0080

Mayor Nicholas Valentine  
City of Newburgh  
83 Broadway  
Newburgh, New York 12550  
(845) 569-7310

Supervisor John Ward  
Town of Wallkill  
600 Route 211 East  
Middletown, New York 10940  
(845) 692-7832

Mr. John Karge  
Village of Wappingers Falls  
2628 South Avenue  
Wappingers Falls, New York 12590

Supervisor Patricia Myers  
Town of Newburgh  
1 Overocker Road  
Newburgh, New York 12603  
(845) 485-3600

Supervisor Robert Gallagher  
Town of Rosendale  
P.O. Box 423  
Rosendale, New York 12472  
(845) 658-3159

Mayor James Miccio  
Village Trustee Steve LaDue  
Village of Fishkill  
1095 Main Street  
Fishkill, New York 12524  
(845) 897-4430  
(845) 656-3369

Supervisor Ray Constantino  
Town of Lloyd  
12 Church Street  
Highland, New York 12528  
(845) 691-2144

Councilman Rick Affuso  
Town of Marlborough  
1650 Route 9W  
P.O. Box 305  
Milton, New York 12547  
(845) 795-2220

Supervisor Joan Pagones  
Town of Fishkill  
807 Route 52  
Fishkill, New York 12524

## References – Emergency Services

### Fire Services

Fire Chief Sam Barone  
Middletown Fire Department  
(845) 343-4169

Fire Chief Richard Salzmann  
Kingston Fire Department  
(845) 331-1959

Chief Daniel Bassanese  
Highland Fire District  
25 Milton Avenue  
Highland, New York  
(845) 691-2421

Dean Scofield  
Fire Chief  
Protection Engine Co.  
1032 Main St.  
Fishkill, New York 12524  
(845) 896-6613

Kyle Pottenburgh  
Fire Marshall  
IBM East Fishkill  
2070 Rt. 52  
Bldg 308  
Hopewell Junction, New York 12533  
(845) 894-2392

Fire Chief Sam Appa  
Ulster Hose Company No. 5  
(845) 339-1280

Fire Chief Christopher Barnhart  
Rosendale Fire Department  
(845) 658-9220

John Paraskeva  
Chairman  
East Fishkill Fire District  
2052 Route 52  
Hopewell Junction, New York 12533  
(845) 226-1652



Law Enforcement

City of Middletown Police Department  
2 James Street  
Middletown, New York 10940  
(845) 343-3151

Chief David Ackert  
Town of Lloyd Police Department  
25 Milton Avenue  
Highland, New York  
(845) 691-6102

Carl E. DuBois, Sheriff  
Orange County Sheriff's Office  
110 Wells Farm Road  
Goshen, New York 10924  
(845) 291-4033

Major Edward Raso  
Station Commander, NYSP Troop F  
55 Crystal Run Road  
Middletown, New York 10941  
(845) 344-5300

Major Robert Kreppin  
New York State Police Aviation  
739 Albany Shaker Road  
Latham, New York 12110  
(518) 242-4500

County Emergency Managers

John Murphy  
Coordinator  
Dutchess County Department of  
Emergency Response  
392 Creek Road.  
Newburgh, New York 12602  
(845) 486-208

Walter Koury, Commissioner  
Orange County Emergency  
Management  
22 Wells Farm Road  
Goshen, New York 10924  
(845) 615-0400

John Horan  
Orange County Fire Coordinator  
Orange County Fire Training Center  
9 Training Center Lane  
New Hampton, New York 10958  
(845) 374-1900

Arthur Snyder, Director  
Ulster County Emergency  
Management  
238 Golden Hill Drive  
Kingston, New York  
(845) 331-7000

### References – Hospitals

Orange Regional Medical Center  
60 Prospect Avenue  
Middletown, New York 10940  
(845) 343-2424

Jonathan Schiller  
Vice President of Administration

Wayne Becker  
Vice President of Special Projects

John Bilancione  
EMS Outreach Coordinator

St. Francis Hospital and Health Centers  
241 North Road  
Newburgh, NY 12601  
(845) 483-5000

Robert Savage  
President and CEO

Nancy DeWitt  
Director of Trauma Services

St. Luke's Cornwall Hospital  
70 Dubois Street  
Newburgh, New York 12550  
(845) 561-4400

Alan Atzrott  
President and CEO

Kevin Ronk  
Vice President of Support Services

Barbara Hermance  
E.D. Nursing Director

Northern Dutchess Hospital  
6511 Springbrook Avenue  
Rhinebeck, New York 12572  
(845) 876.3001

Anne Nelson  
Vice President of Patient Services

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

**OF**

**APRIL 24, 2017**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO  
AN AGREEMENT WITH THE NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION FOR REIMBURSEMENT OF  
ADDITIONAL COSTS INCURRED BY THE CITY OF NEWBURGH  
AS A RESULT OF PROVIDING AN ALTERNATE SOURCE OF DRINKING WATER**

**WHEREAS**, perfluorooctane sulfonic acid (PFOS) has been detected in the City of Newburgh's water supply at levels in excess of the Environmental Protection Agency's recently released lifetime health advisory level; and

**WHEREAS**, it has been determined by Legislative findings under Article 15 of the Environmental Conservation Law (ECL) that the State has the sovereign power to regulate and control the water resources of the State; and

**WHEREAS**, in recognition of power under ECL § 15-0105.5, the use of water for domestic and municipal purposes shall have priority over all other purposes; and

**WHEREAS**, there is a need to provide a temporary alternate source of drinking water to residents of the City of Newburgh, which has access to New York City's Catskill Aqueduct as a backup source of drinking water; and

**WHEREAS**, by Resolution No. 204-2016 of August 8, 2016, the City Council approved Contract No. C010219 between the Department of Environmental Conservation and the City of Newburgh for the reimbursement of the costs of the water which also was approved by the New York State Comptroller's office in August of 2016; and

**WHEREAS**, as a result of the necessity to obtain the alternate source of drinking water, the City of Newburgh has incurred additional costs over and above the actual cost of the water; and

**WHEREAS**, after fully examining all of its internal capabilities and thoroughly investigating possible alternative approaches, the Department of Environmental Conservation has determined that reimbursing the City of Newburgh for such additional cost can best be accomplished through a separate Contract; and

**WHEREAS**, the City Council of the City of Newburgh has determined that entering into a Contract with the Department of Environmental Conservation for reimbursement of the additional costs not covered by Contract No. C010219 associated with providing a temporary alternate source of drinking water to City residents through the New York City Catskill Aqueduct is in the best interest 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 enter a Contract with the New York State Department of Environmental Conservation for reimbursement for the additional expenses incurred by the City of Newburgh associated with providing a temporary alternate source of drinking water to City residents through the New York City Catskill Aqueduct not covered by Contract No. C010219.

**NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
CONTRACT C0\_\_\_\_\_**

**THIS CONTRACT** is entered into by and between the New York State Department of Environmental Conservation (hereinafter referred to as the Department), having offices at 625 Broadway, Albany, New York 12233 and the City of Newburgh (hereinafter referred to as Newburgh), having offices at 83 Broadway, Newburgh, New York 12550.

**WITNESSETH:**

**WHEREAS**, perfluorooctane sulfonic acid (PFOS) has been detected in Newburgh's water supply at levels in excess of the Environmental Protection Agency's (EPA) recently released lifetime health advisory level; and,

**WHEREAS**, it has been determined by Legislative findings under Article 15 of the Environmental Conservation Law (ECL) that the State has the sovereign power to regulate and control the water resources of the State; and,

**WHEREAS**, in recognition of power under ECL §15-0105.5, the use of water for domestic and municipal purposes shall have priority over all other purposes; and,

**WHEREAS**, in order to provide a temporary alternate source of drinking water to residents of Newburgh; Newburgh has accessed New York City's Catskill Aqueduct as a backup source of drinking water; and,

**WHEREAS**, payment for the costs of the water are outlined in a prior contract Between the Department and Newburgh, executed and approved by the New York State Comptroller's office in August of 2016; and,

**WHEREAS**, as a result of the necessity to obtain the alternate source of drinking water, the City of Newburgh has incurred additional costs over and above the payment of the actual cost of the water; and,

**WHEREAS**, The Department has determined after fully examining all of its internal capabilities and thoroughly investigating possible alternative approaches that repayment of the expenses of the City of Newburgh associated with the additional allowable costs can best be accomplished through a Contract.

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

**ARTICLE 1: SCOPE**

- A. The Department agrees to pay the Newburgh documented and Department approved actual costs of certain additional expenses incurred by the City of Newburgh in response to the PFOS contamination in the City of Newburgh drinking water as a result of the discharges from the Air National Guard at Stewart International Airport. Payment shall be based upon Article 2 of this

Contract.

## ARTICLE 2: PAYMENT

- A. The Department shall pay to Newburgh and Newburgh shall accept from the Department as compensation for the actual costs incurred under this agreement and directly associated with the PFOS contamination in the City of Newburgh drinking water an amount not to exceed \$500,000.00.
- B. Newburgh shall submit invoices to the Department quarterly, with supporting documentation and certification by the appropriate financial officer of Newburgh demonstrating the actual costs incurred and paid by Newburgh during the previous quarter for the allowable costs described in the attached Schedule A Allowable Costs. The Department will review and approve the supporting documentation and reimburse Newburgh for the allowable costs incurred and paid by Newburgh.
- C. The Department will authorize payment within 10 days of receipt of invoices and supporting documentation submitted per paragraph D and Schedule A of this article. The Department will make best efforts to arrange payment within 30 days of receipt of those invoices and supporting documentation.
- D. All invoices must contain the proper certification of the Financial Officer of Newburgh attesting that the expenditures were properly made in accordance with all applicable laws and regulations and in accordance with Schedule A; including but not limited to procurement guidelines and cost justifications required in General Municipal Law.
- E. Newburgh will submit requests for payment, together with supporting documentation, to the Department. Request for payment must be submitted within 45 days of the end of each State fiscal year which is March 31. Failure to comply with this request or notify the Department in writing prior to March 31<sup>st</sup> regarding billing problems shall operate as a waiver by Newburgh for reimbursement by the Department.
- F. If the term of this Contract encompasses more than one State fiscal year, Newburgh shall incur no costs hereunder in subsequent fiscal years without the express written authority of the Department.
- G. Payments for expenditures incurred under this contract will be rendered electronically to Newburgh unless payment by paper check is expressly authorized by the Commissioner of the Department (Commissioner), in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. Newburgh shall comply with the Office of the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), or by e-mail at [epayments@osc.state.ny.us](mailto:epayments@osc.state.ny.us). Newburgh acknowledges that it will not receive payment under this

Contract if it does not comply with the Office of the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

### **ARTICLE 3: TERM**

- A. The term of this Contract shall be from June 1, 2016 to December 31, 2018 The Contract shall be effective upon approval by the Office of the State Comptroller.
- B. This Contract may be extended for a maximum of two one-year periods upon the mutual written consent of both parties and the approval of the Office of the State Comptroller.
- C. Amendments other than exercising the term options above must be in writing and submitted to the Attorney General and the Office of the State Comptroller for approval.

### **ARTICLE 4: NOTICES**

Wherever it is provided in this Contract that notice shall be given or other communications sent to the Department or Newburgh, such notices or communications shall be delivered or sent by First Class Mail to:

**Department:**

Division of Environmental Remediation  
NYS Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-7014  
Telephone Number: (518) 402-9662  
E-Mail: [george.heizman@dec.ny.gov](mailto:george.heizman@dec.ny.gov)

**Newburgh:**

Kathryn Mack  
City of Newburgh Comptroller  
83 Broadway  
Newburgh, NY 12550  
Telephone Number: (845) 569-7360  
E-Mail: [kmack@cityofnewburgh-ny.gov](mailto:kmack@cityofnewburgh-ny.gov)

Christine Chale  
**Rodenhausen Chale LLP**  
20 Spring Brook Park  
Rhinebeck NY 12572  
(845) 516-4323  
(845) 516-4528 fax

**ARTICLE 5: LIABILITY**

Newburgh shall be responsible for all damage to life and property due to activities of Newburgh, its subcontractors, agents, or employees, in connection with its Services under this Contract, and this obligation is in no way limited by the enumeration of insurance coverages hereunder. Further, it is expressly understood that Newburgh shall indemnify and save harmless the Department, its officers, employees, agents, and assigns in accordance with the provisions of Appendix B, Clause II.

Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against Newburgh or the State of New York beyond such as may legally exist irrespective of this Article or this Contract.

**ARTICLE 6: DEFAULT AND TERMINATION**

- A. The Department shall have the right to postpone, suspend, abandon, or terminate this Contract, and such actions shall in no event be deemed a breach of Contract. In any of these events, the Department shall make settlement with Newburgh upon an equitable basis as determined by the Department, which shall fix the value of the work which was performed by the Newburgh prior to the postponement, suspension, abandonment, or termination of the Contract.
- B. The State shall have the right to terminate this Contract for:
- 1) unavailability of funds
  - 2) cause



- a) If the Department determines that Newburgh has breached a material term of this Contract, it shall issue a written notice, providing Newburgh with 10 days to correct the defect. If Newburgh fails to correct the defect within this time period, or fails to make a good faith effort to do so as determined by the Department, the Department may terminate this Contract for cause.

3) convenience

- a) If the termination is for the convenience of the Department, and is not brought about as a result of unsatisfactory performance on the part of Newburgh, the Department shall pay for the allowable costs incurred up to the date of termination.

## **ARTICLE 7: STANDARD CONTRACT CLAUSES**

Newburgh will be required to comply with all of the mandatory New York State and Department contracting provisions contained in the following two attached documents:

Appendix A - Standard Clauses for All New York State Contracts;  
Appendix B - Standard Clauses for All NYSDEC Contracts.

## **ARTICLE 8: ENTIRE CONTRACT**

This Contract consists of the following documents in the following order of precedence.

1. Appendix A
2. Appendix B
3. The Contract (including Schedule A)

## **ARTICLE 9: AFFIRMATIVE ACTION REQUIREMENTS**

Newburgh must make good faith efforts to subcontract an overall goal of 0% of the contract amount to Minority and Women Owned Business Enterprises (MWBE's). Newburgh must make good faith efforts to employ 10 % minority group members and 10 % women for a portion of any workforce hours required to perform the work under this contract. Appendix B further defines the M/WBE and EEO provisions required by Executive Law, Article 15A.

## **ARTICLE 10: INSURANCE CONSIDERATIONS**

Newburgh agrees to procure and maintain at its own expense and without expense to the Department Worker's Compensation Insurance and Disability Benefits by insurance companies licensed to do business in the State of New York, covering all operations under this Contract.

Newburgh shall furnish a certificate or certificates showing that it has complied with the Worker's Compensation and Disability Benefits requirements of this Article detailed below. The certificate or certificates shall provide that:

- Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department.
- Worker's Compensation and Disability Benefits certificates shall name the New York State Department of Environmental Conservation, Division of Environmental Remediation, Bureau of Program Management, 625 Broadway, Albany, NY 12233-7012, as certificate holder.
- This Contract shall be void and of no effect unless Newburgh procures the required insurance policies and maintains them until acceptance/completion of the work, whichever event is later.
- Newburgh shall require that any subcontractors hired, carry insurance with the same provisions as provided herein. Newburgh will maintain the certificate or certificates for all subcontractors hired as part of Newburgh's records.

The Department has reviewed the scope of work being accomplished under this contract and has determined that it will rely on the standard operating procedures and good business practices of Newburgh with respect to securing all appropriate types and amounts of liability insurance and appropriate endorsements. The Department waives its standard requirements for liability insurance certificates, endorsements, and supporting documentation for this Contract.

The following types of insurance are required for this Contract:

#### **1. Workers' Compensation:**

For work to be performed in New York State, Newburgh shall provide and maintain full New York State (NYS listed in item 3a of the policy's Information Page) coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

If the agreement involves work on or near a shoreline, a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Act policy as applicable must be provided. Any waiver of this requirement must be approved by the Agency and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

<b>FORM #</b>	<b>FORM TITLE</b>
C-105.2	Certificate of Workers' Compensation Insurance (September 2007, or most current version)
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/	Certificate of Workers' Compensation Self-Insurance

GSI-105.2	
CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

***Please note that ACORD forms are NOT acceptable proof of New York State Workers' Compensation Insurance coverage.***

Additional information can be obtained at the Workers' Compensation website:

<http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

## **2. Disability Benefits:**

For work to be performed in New York State, Newburgh shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Department of Environmental Conservation and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

<b>FORM #</b>	<b>FORM TITLE</b>
DB-120.1	Certificate of Insurance Coverage under the New York State Disability Benefits Law
DB-155	Certificate of Disability Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Contractor meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

***Please note that ACORD forms are NOT acceptable proof of New York State Disability Benefits Insurance coverage.***

Additional information can be obtained at the Workers' Compensation website:

<http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

## **ARTICLE 11: SEVERABILITY**

If any part of this Contract is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Contract, and the remaining

parts of this Contract shall be enforced as if the invalid, illegal or unenforceable part were not contained therein.

#### **ARTICLE 12: FORCE MAJEURE**

Neither party shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of lands or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes or the delay or failure to perform by any subcontractor by reason of any cause or circumstances beyond the reasonable control of such subcontractor.

#### **ARTICLE 13: COMPLIANCE WITH LAWS**

Newburgh agrees to comply with the provisions of the Labor Law and all State and Federal laws, local statutes, ordinances, and regulations that are applicable to the performance of this Contract.

**SIGNATURE PAGE**  
**Contract C0**

**IN WITNESS WHEREOF**, this Contract has been duly executed by the parties hereto on the day and year appearing following their respective signatures.

**Agency Certification:** "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

NEWBURGH SIGNATURE		DEPARTMENT SIGNATURE	
By:		By:	
Print Name:		Print Name:	
Title:		Title:	
Dated:		Dated:	
ATTORNEY GENERAL SIGNATURE		COMPTROLLER SIGNATURE	
          Approved as to Form:		          Approved: Thomas P. DiNapoli State Comptroller	
Dated:		Dated:	

<b>Newburgh Acknowledgement</b>	
State of _____)	
_____)	ss.:
County of _____)	
<p>On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.</p>	
<p>Notary Public</p>	

Schedule A  
Allowable Cost Categories

- 1) Legal Services (directly associated with contamination)
- 2) Engineering Services
- 3) Contractual Services
- 4) Labor (force account)
- 5) Utilities
- 6) Equipment
- 7) Other Allowable Costs including such things as public outreach costs, and costs that do not fit within the above categories but fall within legitimate Department approved expenses associated with the Article 1: Scope.

Reimbursement of all of the above costs are subject to the same documentation requirements and the Department discretion to review and approve as set forth herein.

## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,



whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, 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; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

#### **19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

#### **21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:  
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

## APPENDIX B

### Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

#### I. **Postponement, suspension, abandonment or termination by the Department:**

The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. **Indemnification and Hold harmless** The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

#### III. **Conflict of Interest**

(a) Organizational Conflict of Interest. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may,

without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest: The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has

developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

**If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.**

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

**IV. Requests for Payment** All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

V. **Compliance with Federal requirements** To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. **Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

VIII. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

- (1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or
- (2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or
- (3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

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(Name and Title)

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(Address)

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(Telephone)

The designated appeal individual to review decisions is:

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(Name and Title)

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(Address)

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(Telephone)

The Chair of the Contract Review Committee is:

Department of Environmental Conservation  
Nancy W. Lussier Chair  
Contract Review Committee  
625 Broadway, 10<sup>th</sup> Floor  
Albany, NY 12233-5010  
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final DEC determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(k) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

## **IX. Labor Law Provisions**

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

X. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XI. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIII **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XIV. **Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XV. **Patent and Copyright Protection**

If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

- (1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and
- (2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and
- (3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.
- (4) The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

- (1) procure for the Department the right to continue using the same item or parts thereof;
- (2) modify the same so that it becomes non-infringing and of at least the same quality and performance;
- (3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;
- (4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what



extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

**XVI. Force Majeure** The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

**XVII. Freedom of Information Requests** The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release

and to support its position.

**XVIII. Precedence** In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

## **XIX. Article 15-Requirements**

### **PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

#### **(a) General Provisions**

(1)The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(2)The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department", to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

(3)Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

**(b) Contract Goals**

(1) For purposes of this procurement, the Department hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, (based on the current availability of qualified MBEs and WBEs).

(2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address;

<https://ny.newnycontracts.com>

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

(3) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, 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 Contractor 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 Department for liquidated or other appropriate damages, as set forth herein.

**(c) Equal Employment Opportunity (EEO)**

(1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:

(i) Contractor and Subcontractors 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.

(ii) The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

(iii) If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.

(iv) The Contractor’s EEO policy statement shall include the following language:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employer Department, 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 employer Department, 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 (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- e. **EEO Contract Goals** for the purposes of this procurement, the Department hereby establishes a goal of 10% Minority Labor Force Participation, 10% Female Labor Force Participation.

#### (2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan 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. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

#### (3) Workforce Employment Utilization Report Form ("Workforce Report")

- (i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- (ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

- (iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, 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 Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

- (2) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

#### (d) MWBE Utilization Plan

- (1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- (2) 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 Appendix.
- (3) 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, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### (e) Waivers

- (1) For Waiver Requests Contractor should use Waiver Request Form.

(2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(4) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department 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.

#### **(f) Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### **(g) Liquidated Damages - MWBE Participation**

(1) Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:

- (i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- (ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

(3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the

Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

#### **(h) Forms**

The following forms referenced in Article XVIII 3-A-3, 3B, 3C and 5A can be found at  
<http://www.dec.ny.gov/about/48854.html>

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

OF

APRIL 24, 2017

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY  
KNOWN AS 120 WEST PARMENTER STREET (SECTION 38, BLOCK 2, LOT 42)  
AT PRIVATE SALE TO MICHAEL SERINSKY FOR THE AMOUNT OF \$4,235.00**

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 120 West Parmenter Street, being more accurately described as Section 38, Block 2, Lot 42 on the official tax map of the City of Newburgh; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated 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 28, 2017, being approximately 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>
120 West Parmenter Street	38 - 2 - 42	Michael Serinsky	\$4,235.00

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

### 120 West Parmenter Street, City of Newburgh (38-2-42)

#### 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 is vacant and unoccupied. The parcel is being sold subject to the City's Vacant Property Ordinance and all provisions of law applicable thereto. At closing, the purchaser will be required to register the property and remit the vacant property fee. It is the sole responsibility of the purchaser to redevelop such parcel in accordance with same.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.

8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before July 28, 2017. Such closing costs/fees may include, but are not limited to: recording fees, tax adjustments as of the day of closing, fuel oil adjustments, and applicable condominium charges (e.g. monthly maintenance charges, assessment charges, transfer buy-in fees, and/or closing package ordering fees). *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
11. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
12. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
13. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
14. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
15. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.

16. Evictions, if necessary, are solely the responsibility of the purchaser after closing and recording of the deed.
17. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.



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

**OF**

**APRIL 24, 2017**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT WITH RIVER REALTY SERVICES, INC.  
FOR REAL ESTATE BROKERAGE SERVICES**

**WHEREAS**, on December 23, 2016 the City of Newburgh issued a Request for Proposals for Real Estate Brokerage Services; and

**WHEREAS**, a total of six (6) proposals were duly received and opened on January 25, 2017; and

**WHEREAS**, the proposals have been reviewed by the necessary and appropriate staff; and

**WHEREAS**, upon such review of the submitted proposals it has been determined that River Realty Services, Inc. provided a proposal that was consistent with the needs of the City, has a firm understanding of the local real estate market and have proven successes with distressed property, and proposed the most economic commission; and

**WHEREAS**, this Council has reviewed the attached proposal and has determined that entering into a contract for real estate brokerage services with River Realty Services, Inc. is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into a Master Listing Agreement with River Realty Services, Inc., in substantially the same form as annexed hereto with terms and conditions approved by the Corporation Counsel, for real estate brokerage services.

MASTER LISTING AGREEMENT Cover Page

This Master Listing Agreement (the “Agreement”) is entered into by and between the City of Newburgh (“City” or “Seller”), and the party identified below as “Brokerage Firm” (“Brokerage Firm” or “Broker”). Capitalized terms that are used in this Agreement, but not defined contextually, will have the meanings ascribed to them in **Section 14 (Definitions)**.

Effective Date of Agreement:\_\_\_\_\_

Brokerage Firm Information

Name of Entity:	RIVER REALTY SERVICES, INC.		
Name of Individual signing on behalf of Entity:	LEE A. RAPHAEL	Brokerage Firm is a (check one):	Sole Proprietorship
Title:	BROKER/OWNER	<input checked="" type="checkbox"/>	Corporation
Address:	117 EXECUTIVE DRIVE, SUITE 100,NEW WINDSOR, NEW YORK 12553		Limited Liability Company
Telephone:	845-564-2800		General Partnership
Mobile:	914-474-8146		Limited Partnership
Fax:	845-564-0700		Other (Describe_____)
Email:	LRAPHAEL@riverrealty.com	State in which Brokerage Firm’s Business Entity was formed:	NY
Brokerage Firm should receive legal notices under this Agreement (check one):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Brokerage Firm’s Federal Tax ID Number:	30-0488660
		City of Newburgh Point of Contact Name:	
		Title:	
		Address:	83 Broadway
			Newburgh, NY 12550
		Telephone:	
		Mobile:	
		Fax:	
		E-mail:	

[SIGNATURE PAGE FOLLOWS]

**MASTER LISTING AGREEMENT Signature Page**

By the signatures of their duly authorized representatives below, both parties acknowledge the value and sufficiency of the consideration for entering into this Agreement and agree to be bound by its terms.

**CITY OF NEWBURGH**

83 Broadway  
Newburgh, NY 12550

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

Name of Authorized Signatory: Michael G. Ciaravino

Title: City Manager

Date:

Per Res. No.

**BROKERAGE FIRM: RIVER REALTY SERVICES, INC.**

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

Name of Authorized Signatory: Lee A. Raphael

Title: BROKER/OWNER

Date:

**MASTER LISTING AGREEMENT  
General Terms and Conditions**

**RECITALS**

**WHEREAS, the City of Newburgh is the owner of real property (the “Properties”);**

**WHEREAS, Broker is in the business of listing and selling real property and providing certain brokerage and asset management services on behalf of owners of real property; and**

**WHEREAS, City of Newburgh is in need of such services in relation to the City’s ownership of the Properties;**

**NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:**

**AGREEMENT**

**1. Parties –**

This Agreement is entered into by and between Broker and the City of Newburgh, as seller, of each of the Properties identified by the City of Newburgh in the manner described below.

**2. Effective Date –**

This Agreement is effective as of the date indicated as the “Effective Date” on the Cover Page of this Agreement or, in the event that no date is so indicated, as of the latest date of a party to execute this Agreement (the “Effective Date”).

**3. Term –**

The term of this Agreement shall commence on the Effective Date and continue for a period of (1) one year or until terminated as provided in Section 6 (Termination).

**4. Services –**

**A. Property Assignments.**

The City of Newburgh may assign Properties to Broker prior to listing the Properties for sale (each, a “Property Assignment” and, collectively, the “Property Assignments”) by emailing the broker the address of the property as well as the SBL (section, block and lot).

Broker agrees to perform certain Services with respect to each of the Property Assignments, which such Services include: the issuance of broker price opinions.

**B. Property Listings.**

The City of Newburgh will offer to list Properties with Broker for sale, from time to time, by issuing one or more listing supplements to this Agreement (each, a “Listing Supplement” and, collectively, the “Listing Supplements”) identifying the Properties in connection with which Broker will perform the Services.

Broker will indicate its acceptance of a Property listing: (i) by commencing performance under the applicable Listing Supplement and (ii) returning a signed copy of the Listing Supplement, via

e-mail or fax, to the City of Newburgh.

Each Listing Supplement that has been accepted by Broker is incorporated herein by this reference. Each Property identified in such a Listing Supplement is referred to herein as a "Property Listing."

**C. Delegation of Authority from Broker to Listing Agents to Accept Property Assignments and Property Listings on Behalf of Broker.**

Broker may identify Listing Agents who are working on Broker's behalf to negotiate and arrange real estate sales. Listing Agents may be identified by Broker through the Broker's own, internal Property Assignment System or other electronic platform or non-electronic means designated for such purpose by the Broker. Broker acknowledges and agrees that all such Listing Agents are authorized to: (1) act on its behalf with respect to the acceptance of Property Assignments and Property Listings under sub-sections (A) and (B) above; and (2) act on its behalf with respect to the management of such assignments and listings through the sale process; each Property Assignment and Property Listing accepted by any such Listing Agent shall be deemed to have been accepted by Broker hereunder.

**D. Exclusivity.**

City of Newburgh employs Broker as its sole exclusive agent for the sale of the Properties it has or will have, or will acquire title to, identified in the Listing Supplements.

**E. Listing Period.**

Broker has the exclusive right to sell a Property during the listing period set forth in the applicable Listing Supplement or any subsequent extension thereof, unless the Listing Supplement or the Agreement is terminated early pursuant to Section 6 (Termination; Expiration).

The initial listing period set forth in a Listing Supplement may be extended by the City of Newburgh in its sole discretion for any period of time.

**F. Price.**

Each Property will be offered for sale at the price listed in the applicable Listing Supplement, on terms and conditions that are satisfactory to City of Newburgh.

**G. Performance.**

(1) Broker's Responsibilities Concerning Property Listings. Broker covenants and agrees to perform the Services in accordance with the following requirements.

(a) Listing the Property. Broker agrees to use due diligence to find a buyer for each Property, including: (i) listing Property with all other brokers on a co-brokerage basis; (ii) using the most appropriate multiple listing service available to Broker; and (iii) cooperating with other brokers. The City of Newburgh expressly authorizes Broker to sign a multiple listing agreements.

**5. Commissions and Fees –**

**A. City-Owned Sales Channel.**

The City of Newburgh agrees to pay Broker a total sales commission of (\_5\_ %) of the sales price or \$2500, whichever is greater, with respect to each Property Listing as set forth in the Listing Supplement if, during the listing period, the Property is sold to a buyer on the terms stated in this Agreement, or, if within six months of end of the listing period or the earlier termination of this Agreement pursuant to section 6 below, the Property is sold to a Buyer with whom the Broker or a cooperating Broker negotiated or to whom the Property is offered or shown during the listing period to a Buyer on the terms set forth in this Agreement.

Commissions will be paid on a per Property basis from the proceeds of the sale of the Property at settlement. Any such fee shall be paid if and only if: (A) a valid and enforceable closing of the sale of the Property occurs and the sale is funded; (B) the commission is reflected on the HUD-1 settlement statement for the Property; and (C) the Newburgh City Council has adopted a resolution approving the sale and said sale is confirmed by resolution of the City Council.

## **6. Termination; Expiration –**

### **A. Termination of Agreement.**

The City of Newburgh or Broker may terminate the Agreement at any time with or without Cause upon written notice to the other party, effective on the date specified in such notice or 30 days from the date of delivery as set forth in paragraph 12.

### **B. Termination or Expiration of Listing Supplement or Property Listing**

Listing Supplements will expire on the date specified in the Listing Supplement, unless a Property identified in the Listing Supplement is under contract (subject to an Offer) on the expiration date, in which case the Listing Supplement shall remain in effect until: (x) a valid and enforceable closing of the sale of the Property occurs and the sale is funded, or (y) the local form of Purchase Agreement / Addenda comprising the Offer terminate or expire as provided therein.

## **7. Warranties –**

Broker makes the representation, warranties and covenants contained in the subsections below to City of Newburgh as of the Effective Date of this Agreement. Representations, warranties and covenants that, by their nature or context, may reasonably be understood to be continuing obligations of Broker shall be deemed to be remade and effective on a continuous and uninterrupted basis throughout the term of the Agreement.

### **A. Corporate Status; Licensing.**

Broker represents, warrants and covenants to City of Newburgh:

(i) if Broker is an entity, that it is a duly organized, validly existing and in good standing under the laws of the state in which it is organized;

(ii) its execution, delivery and performance of this Agreement: (a) if Broker is an entity, has been authorized by all necessary corporate action; (b) do not violate the terms of any law, regulation, or court order to which Broker is subject, or the terms of any material agreement or statutory restriction to which Broker or any of its assets are subject; and (c) are not subject to the consent or approval of any third party;

(iii) this Agreement is the valid and binding obligation of Broker, enforceable against Broker in accordance with its terms;

(iv) that it: (a) is licensed, qualified and in good standing as a real estate broker in each state or jurisdiction where a Property subject to a Listing Supplement is located; (b) has all other licenses that are necessary to carry on its business as now being conducted; and (c) will provide a copy of all such licenses and certificates of good standing to City of Newburgh upon request;

(v) Broker has secured and will continue to maintain during the term of this Agreement all federal, state and/or local permits, licenses, regulatory approvals and registrations required to render the Services described herein, including, without limitation, registration with the appropriate taxing authorities for remittance of taxes; and

(vi) Broker is not subject to any pending or threatened litigation or governmental action which could interfere with Broker's performance of its obligations hereunder.

The person who executes this Agreement and all related documents on behalf of Broker represents and warrants to the City of Newburgh that he or she is a duly authorized agent of Broker with the requisite power and authority to bind Broker to the terms of this Agreement.

#### **B. Performance.**

In performing its obligations under this Agreement, without limiting any other warranty hereunder, Broker represents, warrants and covenants to the City of Newburgh:

(i) all work will be performed in a professional and workmanlike manner with the reasonable care that would be taken by qualified, competent and experienced real estate brokers and real estate asset managers;

(ii) all work will be performed in accordance with the standards set forth in this Agreement and all applicable industry standards and practices;

(iii) Broker has the requisite personnel, competitive alliances, and financial and physical resources necessary to provide and to fully perform the Services under this Agreement; and

#### **8. Insurance –**

During the Term of this Agreement (and, to the extent that any insurance is carried on a claims made basis, for such period thereafter that claims may be legally made with respect to occurrences during the Term) and in any event prior to commencement of Services under this Agreement, Broker will have and maintain in force, at Broker's expense, no less than the types and amounts of insurance coverage described below.

- (1) Workers' Compensation insurance with coverage applicable in all states in which services are to be performed with limits in accordance with the statutory requirements and all applicable Laws of each such state, and Coverage B – Employer's Liability Coverage, including occupational disease, with a limit of not less than \$1,000,000 per accident.
- (2) Commercial General Liability Insurance covering Broker's operations, with limits acceptable to Seller, but with combined single limits for bodily injury, personal injury and property damage not less than \$2,000,000, with Seller named as an additional

insured and including coverage as follows:

- Commercial General Liability (Comprehensive Form)
  - Broad Form Contractual Liability
  - Independent Contractors (if any part of the services contemplated herein is performed by an independent contractor)
  - Broad Form Property Damage
  - Personal Injury
- (3) Automobile insurance including coverage for owned, non-owned and hired vehicles in the amount of \$1,000,000 per occurrence for bodily injury and property damage.
- (4) Professional Liability/E & O Insurance in the amount of \$1,000,000, including coverage for errors and omissions caused by Broker's negligence in the performance of its duties under this Agreement.
- (4) All insurance that Broker is required to maintain under any applicable Laws.

#### **9. Limitation of Liability –**

IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY WITH RESPECT TO THIS AGREEMENT, OR FOR ANY ACT OR OMISSION OCCURRING IN CONNECTION WITH THIS AGREEMENT, FOR LOST PROFITS, LOSS OF BUSINESS OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE OR UNDER ANY LEGAL THEORY WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER OR NOT THE DAMAGES WERE REASONABLY FORESEEABLE.

#### **10. Independent Contractor –**

##### **A. Independent Contractor.**

Broker shall at all times be and act as an independent contractor of The City of Newburgh and, as such, no law, agreement or other arrangement that has the effect of conferring benefits upon officers or employees of the City of Newburgh shall be applicable to Broker or Broker Personnel in connection with the Services. Broker Personnel will be, and will remain at all times, employees or independent contractors of Broker (or Subcontractor, as the case may be) and shall not be deemed to be employees of The City of Newburgh for any purpose whatsoever. As between the City of Newburgh and Broker, Broker shall be solely responsible for the safety and supervision of Broker's employees and payment of wages, salaries and other amounts due such employees in connection with this Agreement and shall be responsible for all taxes, reports and other obligations respecting employees required by law.

#### **11. Compliance with Laws –**

In its performance of this Agreement, Broker shall fully comply with all applicable federal, state and local laws, including, without limitation: (a) all anti-discrimination, anti-retaliation and wage-payment laws; (b) all debt collection laws; and (c) all laws that prohibit discrimination in housing, lending and their related activities, including, without limitation, the Fair Housing Act at 42 USC §3601 et. seq., the Equal Credit Opportunity Act at 15 USC §1691 et. seq. and the Family Medical Leave Act.

#### **12. Notices –**

All material communications and legal notices relating to this Agreement shall be given, as follows: (a) in the case of the City of Newburgh to the party listed on the Cover Page as the "City of Newburgh of Contact" with a copy to Corporation Counsel; (b) in the case of Broker, to (i) the party identified by Broker as the recipient of legal notices on the Cover Page, or (ii) if no party has been identified as the recipient of legal notices on the Cover Page, the party identified on the Cover Page as the "Broker of



Record,” or (c) in either case, such other point of contact designated in writing by a Vice President or more senior officer of the party. All such communications and notices shall be in writing, addressed to the parties at the addresses set forth on the Cover Page, or the latest known valid address of the parties, and shall be considered received: (a) when personally delivered; (b) when delivered by commercial overnight courier with verification receipt; (c) when sent by confirmed facsimile; or (d) three (3) days after having been sent, postage prepaid, via certified mail, return receipt requested.

### **13. Miscellaneous –**

#### **A. Complete Agreement.**

The complete Agreement between the parties consists of the Cover Page, the Signature Page, the General Terms and Conditions and all other documents incorporated into the Agreement by reference; the complete Agreement referenced in the preceding clause supersedes all prior agreements, representations and understandings between the parties with respect to Services performed under this Agreement.

#### **B. Amendments.**

Except as otherwise provided in this Agreement, all amendments and modifications to the Agreement or any Listing Supplement issued hereunder must: (a) be in writing and executed by authorized representatives of both parties.

#### **C. Assignment.**

Broker may not assign its rights or obligations under this Agreement to any party without the prior written consent of the City of Newburgh. Without limiting the generality of the foregoing, Broker shall not assign, co-list, or refer any Property Listing to any individual outside of its own organization without the prior written consent of the City of Newburgh.

#### **D. Governing Law; Attorneys’ Fees.**

This Agreement and performance hereunder shall be governed by the laws of the State New York. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the courts located within the County of Orange, New York. Both parties consent to the jurisdiction and venue of such courts and irrevocably waive any objections thereto.

In any litigation by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the parties shall bear their own attorney fees, and costs and expenses incurred and the parties hereby waive any right or claim for the award of statutory attorneys' fees.

#### **E. Survival.**

Sections 5 (Commissions and Fees); 6 (Termination; Expiration), 8 (Insurance), 9 (Limitation of Liability), 10 (Independent Contractors), 12 (Notices), 13 (Miscellaneous), 14 (Definitions) and any other provisions of this Agreement that contemplate their continuing effectiveness shall survive termination of this Agreement.

#### **F. Severability.**

If any provision of this Agreement shall be held invalid for any reason, then such provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity or enforceability of the other provisions of this Agreement.

**G. Caption References and Headings.**

All Section headings in this Agreement are for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement.

**H. Construction.**

Notwithstanding the general rules of construction, both the City of Newburgh and Broker acknowledge that both parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

**14. Definitions**

The following are definitions of capitalized terms used in this Agreement. Documents that are incorporated by reference may include additional defined terms for the purposes of the specific document.

“Agreement” means the Cover Page, the Signature Page(s), the General Terms and Conditions, the Listing Supplements and all other documents incorporated into the Agreement by reference.

“Broker” means the party to be charged under this Agreement with fulfilling all of the terms and conditions set forth herein. The authorized signatory of the Broker may be the Broker of Record or the Managing Broker.

“Broker of Record” means an individual who is licensed to operate, and is responsible for the overall management and control of, a real estate brokerage business. The Broker of Record may, but is not required to, delegate certain management duties to a Managing Broker.

“Broker Personnel” means the Broker, whether or not such party is an individual or a business entity, and the employees, independent contractors and Subcontractors of Broker.

“Cover Page” means the introductory page(s) to this Agreement containing information about Broker and its affiliates.

“Effective Date” means the date this Agreement becomes effective; the Effective Date is identified in Section 2.

“Listing Agent” means an individual who operates under the supervision of the Broker of Record or the Managing Broker, if the management duties of the Broker of Record were delegated to the Managing Broker, to negotiate and arrange real estate sales.

“Listing Supplement(s)” means the supplement(s) issued by the City of Newburgh from time to time, identifying Properties subject to Services to be performed by Broker under this Agreement, as modified and amended from time to time.

“Managing Broker” means an individual who is responsible for exercising the rights conferred on the Broker, supervising the performance and activities of the Broker Personnel and generally controlling and conducting the Broker’s real estate business. The Managing Broker and the Broker of Record may, but are not required to be, the same individual. If different, the Broker of Record may delegate its management duties to a Managing Broker.

“Purchase Agreement” means a standard real estate purchase agreement form for the area in which a Property is located.

“City-Owned Sales Channel” means the retail sales channel utilized by the City of Newburgh manage and dispose of Properties directly through Broker.

“Services” means tasks performed or to be performed by Broker under this Agreement, including the property valuation, listing and marketing Services.

“Signature Page” means the page that is executed by the City of Newburgh and Broker to indicate their intent to accept and be bound by the terms and conditions of this Agreement; the Signature Page may consist of multiple pages if executed by the parties in counterparts.

## Listing Supplement

Date:

Lee A. Raphael  
River Realty Services, Inc.  
117 Executive Drive, Suite 100  
New Windsor, NY 12553

Dear Lee:

The City of Newburgh, referred to throughout this document as the "Seller", grants you sole right and authority to sell this property during the listing period subject to the terms and conditions of the current City of Newburgh Master Listing Agreement.

### Listed Property

Address:

County: Orange  
Type of Property:  
City of Newburgh Property ID:

### Listing Terms and Conditions:

Listing Price:  
List Start Date:  
List End Date:  
Conditions: Purchase of the property will be by cash at the closing or on terms acceptable to the Seller.

### Commission and Bonus:

Total Broker Commission Percentage: 5%  
Listing Agent Commission Percentage: 2.5%  
Buyers Agent Commission Percentage: 2.5%  
Minimum Listing Commission Amount: \$1250.00  
Minimum Buyers Agent Commission Amount: \$1250.00

Listing Agent Bonus:  
Listing Agent Bonus Expiration Date:  
Buyer Incentive Amount:  
Special Instructions:

### MLS Listing Instructions:

Enter the listing in your local MLS and retain a copy of the listing in your files.

The terms of this letter supersede and replace the terms of any prior letter granting authority to sell this property.

---

*Acknowledged Broker / Agent* \_\_\_\_\_

*Date* \_\_\_\_\_

---



Wednesday, January 25, 2017

City of Newburgh  
Office of Planning and Development  
Newburgh, NY 12550

RE: RFQ / Real Estate Brokerage Services

Dear Sir/Madam:

We are pleased to submit River Realty Services' proposal in response to your RFQ to provide Real Estate Brokerage Services to the City of Newburgh. The attached outlines our approach to the project and addresses the information requirements outlined in the RFQ.

With over thirty years' experience managing, marketing and selling residential and commercial at-risk and distressed properties, our firm has the breadth of knowledge and experience to undertake this initiative on behalf of the City of Newburgh. No other area real estate firm has advised non-profits, corporations, financial institutions, financial sponsors, governments and public authorities to the extent that River Realty Services has in this segment of the real estate market. With over 550 at-risk and distressed residential and commercial properties sold in 2016, we can help the City of Newburgh with a customized and holistic solution to its real estate needs.

We would be pleased to answer any questions you might have regarding our submission.

Thank you for the opportunity to submit our proposal for your consideration.

Sincerely,

Lee A. Raphael  
Sr. Managing Broker / Property and Asset Management  
River Realty Services, Inc.

Encl. RFQ Proposal: Real Estate Brokerage Services for the City of Newburgh, NY (hard original copy plus four hard copies)

Residential · Commercial · Leasing · Development · Property / Asset Management

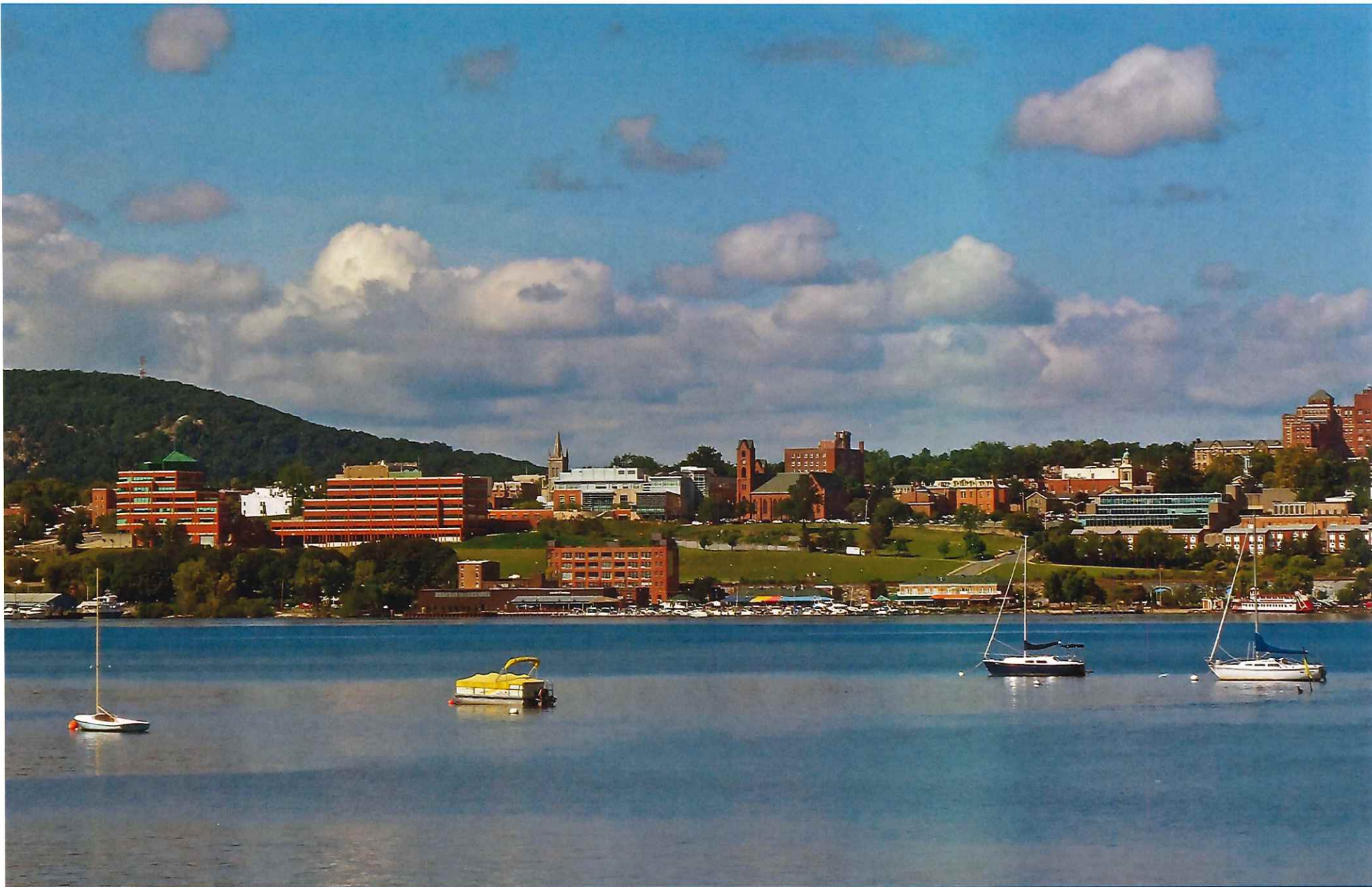


Orange County Office ☐  
117 Executive Drive, Suite 100  
New Windsor, NY 12553  
Phone: 845-564-2800  
Fax: 845-564-0700

Dutchess County Office ☐  
297 Mill Street, Suite 203  
Poughkeepsie, NY 12601  
Phone: 845-486-1100  
Fax: 845-564-0700

E-mail: [info@riverrealty.com](mailto:info@riverrealty.com)  
Web: [www.riverrealty.com](http://www.riverrealty.com)





Request for Qualifications (RFQ)  
Real Estate Brokerage Services | City of Newburgh, NY



River Realty Services  
PROPERTY / ASSET MANAGEMENT



State of New York <b>Department of State</b> DIVISION OF LICENSING SERVICES		FOR OFFICE USE ONLY Control No. <b>1228496</b> 3307-10	
REAL ID NUMBER <b>10311204404</b>		Be known that pursuant to the provisions of Article 22 of the Real Property Law	
RIVER REALTY SERVICES INC 117 EXECUTIVE DR STE 100 NEW Windsor NY 12553		EFFECTIVE DATE MO. DAY YR <b>12 30 2015</b>	
HAS BEEN DULY LICENSED TO TRANSACT BUSINESS AS A REAL ESTATE BROKER AND TO BE REPRESENTED BY RAPHAEL LEE A		EXPIRATION DATE MO. DAY YR <b>12 29 2017</b>	
IN WITNESS WHEREOF, The Department of State has caused this official seal to be hereunto affixed.		CESAR A. PERALES SECRETARY OF STATE	
4 (FHC 405)			

Request for Qualifications (RFQ)  
Real Estate Brokerage Services | City of Newburgh, NY



**River Realty Services**  
PROPERTY / ASSET MANAGEMENT

# Proof of Membership - H G A R



## HUDSON GATEWAY ASSOCIATION OF REALTORS®, INC.

60 South Broadway, White Plains, New York 10601

914.681.0833 • Fax 914.681.6044 • [www.HGAR.com](http://www.HGAR.com)

9 Coates Drive, Suite 1, Goshen, New York 10924 • 845.294.7905

2 Medical Park Drive, Suite 17A, West Nyack, New York 10994 • 845.735.0075

January 11, 2016

Please be advised that Lee A. Raphael is a New York State Licensed Real Estate Corporate Broker with River Realty Services Inc. and is a member in good standing with the Hudson Gateway Association of REALTORS®, Inc.

2016 National Association of Realtors, New York State Association of Realtors and Hudson Gateway Association of REALTORS® dues have been paid in full.

NRDS #	635091127
License #	10311204404
Office #	643500578

Sincerely,

Hudson Gateway Association of REALTORS®, Inc.

*Karen Peters*

Karen Peters  
Director Membership Services  
Office Manager, West Nyack Branch  
[Karen.Peters@HGAR.com](mailto:Karen.Peters@HGAR.com)  
(845) 735-0075

REALTOR® is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®.

Request for Qualifications (RFQ)  
Real Estate Brokerage Services | City of Newburgh, NY



River Realty Services  
PROPERTY / ASSET MANAGEMENT



# Broker / Brokerage Resume | Lee A. Raphael

## Sr. Managing Broker | Lee A. Raphael

Lee A. Raphael, a 22 year real estate veteran, heads Property and Asset Management group at River Realty Services. With his team, Lee has directed the management, marketing and successful disposition of over 3500 distressed and at-risk properties. A leader in his field, he is an active member of the National REO Broker's Association (NRBA), Real Estate Owned Managers of California (REOMAC), New York State REO Brokers (NYSREO), Certified Distressed Property Institute (CDPI) and many other trade and professional organizations. He holds the CDPE (Certified Distressed Property Expert) and DMS (Default Management Specialist) designations. He also has extensive, specialized course work in all facets of real estate and asset management.

## Property / Asset Management Group

10 personnel, including full and part time support staff, as well as independent contractors, make up the team. Of these, three Associate Brokers (Brian T. Smith, Desiree Beecham and William Barham) work in conjunction with Lee A. Raphael to manage, market and sell residential and commercial distressed and at-risk properties. Their combined experience is over 75 years.

Brian T. Smith, CDPE, e-PRO, GRI, SFR, AHS  
Sr. Associate Real Estate Broker

Desiree Beecham, GRI  
Associate Real Estate Broker

William Barham  
Associate Real Estate Broker

Diana Lamando, Team Lead  
Closing / Escrow / Title

Francesca Manno  
Offer Management / Negotiations

Kathleen Sweeney  
Contracts

## Group Highlights:

- 550 residential and commercial at-risk, distressed and bank owned properties sold in 2016.
- Named to the Top 100 Real Estate Teams in the USA by the Wall Street Journal.
- Over 75 years combined experience
- Established in 1985 by founding broker Mark L. Raphael
- Extensive vendor network of professional, licensed contractors, experienced in all facets of distressed property management, preservation and capital repairs.
- Seven licensed agents at River Realty Services focusing exclusively on working with first time buyers, move up buyers and investors. Many of agents have had multiple transactions in the city of Newburgh this year; some are bi-lingual (Spanish, Chinese).

Kerly Scialpi, Licensed Real Estate Agent (Spanish Speaking)  
20 City of Newburgh Transactions in 2016

Annette MacClugage, Licensed Real Estate Agent  
2 City of Newburgh Transactions 2016

Richard LiCastri, Licensed Associate Broker  
2 City of Newburgh Transactions 2016

Additional licensed Agents working in the city of Newburgh for River Realty Services:

Yvonne Mulholland

Jimmy Cheung (Chinese Speaking)

Lizzie Reyes (Spanish Speaking)

Tara Perry

Chris Orefice

April McDougal

Dergham C. Dergham

Request for Qualifications (RFQ)  
Real Estate Brokerage Services | City of Newburgh, NY



River Realty Services  
PROPERTY / ASSET MANAGEMENT



## List of Closed Sales - Last Three Years - City of Newburgh

Street Number	Address	Sold Price	Closed Date	Street Number	Address	Sold Price	Closed Date	Street Number	Address	Sold Price	Closed Date
10	Wilson Street	\$ 52,000	1/9/2014	145	Lander Street	\$ 8,000	8/14/2015	298	Liberty Street	\$ 35,000	8/25/2016
234	Grand Street	\$ 85,650	2/18/2014	69	Benkard Avenue	\$ 35,900	8/19/2015	3	Columbus Lane	\$ 83,000	8/26/2016
61	Townsend Avenue	\$ 70,000	2/27/2014	81	Robinson Avenue	\$ 38,000	9/17/2015	72	Valley Avenue	\$ 146,000	9/12/2016
26	Washington Place	\$ 33,100	3/24/2014	240	Broadway	\$ 115,000	9/24/2015	16-18	City Terrace	\$ 31,000	9/14/2016
525	Gidney Avenue	\$ 85,000	5/23/2014	51	Liberty Street	\$ 58,000	11/5/2015	40	Allison Avenue	\$ 120,000	10/7/2016
45	Wilkins Street	\$ 51,000	7/11/2014	88	Poplar Street	\$ 65,000	12/11/2015	274	Van Ness Street	\$ 57,000	10/7/2016
64-66	William Street	\$ 40,000	7/30/2014	243	Third Street	\$ 30,000	12/18/2015	43	Hudson View Terrace	\$ 54,000	10/20/2016
179	West Street	\$ 55,000	9/26/2014	47	Carpenter Avenue	\$ 30,000	12/28/2015	155	Fullerton Ave	\$ 40,000	10/21/2016
169	Liberty Street	\$ 46,000	9/29/2014	424	Carpenter Avenue	\$ 57,000	12/29/2015	195	Chambers Street	\$ 12,500	10/26/2016
166	Washington Street	\$ 17,500	11/6/2014	130	Fullerton Avenue	\$ 25,000	12/30/2015	49	Carpenter Avenue	\$ 35,000	10/27/2016
40	West Street	\$ 65,500	11/13/2014	39	Carter Street	\$ 26,000	1/8/2016	18	Benkard Avenue	\$ 31,500	10/28/2016
87	City Terrace	\$ 40,000	12/31/2014	154	South Street	\$ 9,000	1/21/2016	11	Nott Place	\$ 55,000	11/1/2016
74	Grove Street	\$ 19,000	1/14/2015	32	City Terrace	\$ 2,500	1/22/2016	46	Wilkin Street	\$ 49,500	11/17/2016
37	Townsend Avenue	\$ 40,100	1/30/2015	142	Chambers Street	\$ 45,000	1/25/2016	14	Dubois Street	\$ 33,000	11/21/2016
17	Clark Street	\$ 50,000	2/5/2015	3-4	Williamsburg Drive	\$ 116,500	2/3/2016	47	South Miller Street	\$ 28,900	11/28/2016
29	Concord Street	\$ 42,000	2/5/2015	200	South Street	\$ 9,700	2/10/2016	90	City Terrace	\$ 24,000	11/30/2016
72	Maple Street	\$ 34,500	2/13/2015	77	Benkard Avenue	\$ 22,000	2/24/2016	101	Liberty Street	\$ 262,000	12/2/2016
35	Benkard Avenue	\$ 45,000	2/18/2015	100	Carson Avenue	\$ 14,750	2/25/2016	20	Pierces Road		12/3/2016
58	Courtney Avenue	\$ 25,000	2/24/2015	20	Pierces Road	\$ 40,000	3/4/2016	424	Carpenter Avenue	\$ 50,100	12/5/2016
216A	Dubois Street	\$ 24,800	2/26/2015	30	Fullerton Avenue	\$ 77,000	3/21/2016	154	Grand Street	\$ 180,000	12/16/2016
77	Liberty Street	\$ 39,000	2/26/2015	12	Hudson View Terrace	\$ 44,000	3/30/2016	20	Nott Place	\$ 95,000	12/19/2016
287	Grand Street	\$ 35,000	3/2/2015	65	Carson Avenue	\$ 35,000	3/31/2016				
101	Overlook Place	\$ 42,400	3/4/2015	101	West Street	\$ 85,000	4/22/2016				
28	Spring Street	\$ 21,000	3/12/2015	42	Carpenter Avenue	\$ 18,500	4/28/2016				
25	Pierces Road	\$ 42,000	3/19/2015	145	Johnston Street	\$ 4,990	4/28/2016				
95	Overlook Place	\$ 14,900	4/7/2015	410	Robinson Avenue	\$ 10,800	4/29/2016				
107	Dupont Avenue	\$ 42,500	5/12/2015	221	North Miller Street	\$ 17,500	5/26/2016				
154	Grand Street	\$ 95,000	6/17/2015	312	South Street	\$ 13,500	5/27/2016				
14	Bush Avenue	\$ 37,000	6/22/2015	86	Prospect Street	\$ 42,000	6/1/2016				
138	Chambers Street	\$ 25,500	6/24/2015	547	South Street	\$ 33,155	6/16/2016				
130	Lander Street	\$ 43,000	6/24/2015	31	Maple Street	\$ 50,000	7/13/2016				
70	Johnes Street	\$ 30,000	6/29/2015	331	Carpenter Avenue	\$ 160,000	7/22/2016				
109	First Street	\$ 50,000	7/15/2015	8	Little Monument Street	\$ 5,100	7/27/2016				
3-4	Williamsburg Drive	\$ 35,000	7/15/2015	350	Water Street	\$ 80,000	7/28/2016				
490	Liberty Street	\$ 61,500	7/29/2015	91	City Terrace	\$ 45,100	8/1/2016				
27	Forsythe Place	\$ 60,000	8/6/2015	177	Liberty Street	\$ 26,000	8/8/2016				
				169	Fullerton Avenue	\$ 35,000	8/19/2016				

Request for Qualifications (RFQ)  
Real Estate Brokerage Services | City of Newburgh, NY



River Realty Services  
PROPERTY / ASSET MANAGEMENT



## List of Active / Pending Sales - City of Newburgh

Street Num PR	Address-PR	City - PR	List Price
90	Broad Street	Newburgh	\$ 284,900
375	Third Street	Newburgh	\$ 114,900
5	Hillcrest Place	Newburgh	\$ 99,900
172	Grand Street	Newburgh	\$ 290,000
408	Carpenter Avenue	Newburgh	\$ 94,900
34	Roe Street	Newburgh	\$ 120,000
132	Carson Avenue	Newburgh	\$ 44,900
58	Courtney Avenue	Newburgh	\$ 129,000
162	First Street	Newburgh	\$ 69,900
61	Courtney Avenue	Newburgh	\$ 129,000
603	Broadway	Newburgh	\$ 1,000
268	Grand Street	Newburgh	\$ 270,000
82	William Street	Newburgh	\$ 98,000
58	Courtney Avenue	Newburgh	

Request for Qualifications (RFQ)  
Real Estate Brokerage Services | City of Newburgh, NY



River Realty Services  
PROPERTY / ASSET MANAGEMENT



# Marketing Proposal

River Realty Services provides broad market exposure for all of its properties through the following proven platforms, systems and techniques listed below:

- Membership is five MLS systems as well as LoopNet Commercial MLS
- Custom website with 25000 hits per month—www.riverrealty.com
- Targeted, professional broadcast e-mailing to proprietary database of over 7500 investors, home buyers and real estate brokers.
- Signage placed at each property
- Additional internet exposure with listings showcased on Craigslist, Facebook, Instagram, Twitter and LinkedIn.
- Properties franchised to over 75 real estate related websites via the ListHub Portal, including: Trulia, Zillow, realtor.com, yahoorealestate and scores of other sites.



Request for Qualifications (RFQ)  
Real Estate Brokerage Services | City of Newburgh, NY



**River Realty Services**  
PROPERTY / ASSET MANAGEMENT



## Disclosure Information | River Realty Services, Inc. | Lee A. Raphael

- ♦ List of properties owned in the city of Newburgh by the broker as an individual, partner or as a principal / officer in a corporate entity:

The broker owns no properties in the city of Newburgh in any capacity; individual, partner or as principal / officer in a corporate entity.

- ♦ Potential conflicts of interest with any city of Newburgh elected official (s) or staff.

The broker has no known conflicts of interest with any elected City official or staff.

## Proposed Commission Rate / Fee Schedule and Cooperating Broker Split

- ♦ River Realty Services, Inc. will charge a commission of 5% (five percent) of the sale price of any property, or a flat fee of \$2500, whichever is greater.
- ♦ River Realty Services, Inc. further agrees to offer 2.5% (two and one-half percent) of the sales price or a flat fee of \$1250, whichever is greater, to cooperating Brokers who successfully procure a purchaser who closed the purchase of a property for sale.

Total Commission	Total Flat Fee
5%	\$2500
Cooperating Broker Total Commission	Cooperating Broker Flat Fee
2.5%	\$1250

## Contact Information

Lee A. Raphael | Senior Managing Broker | Property / Asset Management

River Realty Services, Inc.  
117 Executive Drive, Suite 100  
New Windsor, NY 12553

Direct 914.474.8146  
Office 845.564.2800 x116  
Fax 845.546.0700

E-mail: [Lraphael@riverrealty.com](mailto:Lraphael@riverrealty.com)  
Web: [www.riverrealty.com](http://www.riverrealty.com)

Request for Qualifications (RFQ)  
Real Estate Brokerage Services | City of Newburgh, NY



River Realty Services  
PROPERTY / ASSET MANAGEMENT

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

**OF**

**APRIL 24, 2017**

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ENTER INTO AN AGREEMENT WITH THE COUNTY OF ORANGE  
FOR THE SUMMER YOUTH EMPLOYMENT AND TRAINING PROGRAM TO  
PROVIDE YOUNG PEOPLE TO WORK FOR THE CITY OF NEWBURGH  
FOR THE SUMMER OF 2017**

**WHEREAS**, the County of Orange is once again offering a Summer Youth Employment and Training Program for the purpose of providing meaningful work experience for participants; and

**WHEREAS**, the City of Newburgh wishes to apply for 14 youth participants; and

**WHEREAS**, the City of Newburgh Recreation Department and the Department of Planning and Development have expressed an interest in using this program to provide summer jobs for young people and service to the City of Newburgh; and

**WHEREAS**, this Council finds that entering into the attached agreement with Orange County for this purpose is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an agreement and other necessary documents with the County of Orange in order to participate in the Summer Youth Employment and Training Program which provides young people to work in the City of Newburgh for the Summer of 2017.

**SUMMER YOUTH EMPLOYMENT PROGRAM  
WORKSITE AGREEMENT**

Worksite# \_\_\_\_\_

Worksite Name: City of Newburgh

Allotted Slots: 14

This Summer Youth Employment Program Worksite Agreement ("**Agreement**") is entered into as of this 3 day of July, 2017, by and between the County of Orange ("**County**"), a municipal corporation, by and through its Employment & Training Administration ("**ETA**"), with its principal offices located at 18 Seward Avenue, Middletown New York ") and

City of Newburgh located at  
83 Broadway, Newburgh, NY 12550 ("**Worksite**").

The Worksite shall implement the Summer Youth Employment Program ("**SYEP**") in accordance with the provision of this Agreement commencing July 3, 2017 and ending close of business on August 4, 2017 unless extended, in writing, by the mutual agreement of the parties hereto ("**Term**").

This Agreement includes the following incorporated attachments:

- Schedule A – Worksite Supervisor(s)
- Schedule B – SYEP Participant Job Duties
- Schedule C – Secretary of the US Department of Labor SCANS Criteria.

In addition, ETA shall deliver to Worksite a copy of the New York State Department of Labor Child Labor Laws, which are incorporated into this Agreement by reference.

Worksite has requested, and the County will place, SYEP youth participants ("**SYEP Participants**") for meaningful work experience employment with the Worksite.

The terms and conditions of the SYEP Participant placements are as follows:

**I. COUNTY RESPONSIBILITIES**

County, by and through its ETA, shall:

- A. Monitor and evaluate SYEP Participants assigned to Worksite.
- B. Monitor Worksite to determine its compliance with the terms and conditions of this Agreement, and recommend any corrective action necessary to continue this Agreement.

- C. Pay the wages of SYEP Participants assigned to Worksite and maintain all earnings, social security, and tax records related thereto.
- D. Procure and maintain Worker's Compensation coverage for SYEP Participants.
- E. Have no liability under this Agreement to Worksite, any SYEP Participant, or anyone else beyond the funds appropriated and available for this Agreement. This Agreement is made subject to and limited by the County's receipt of federal funds sufficient to sustain a county-wide program SYEP. County does not assume any financial responsibility to sustain a SYEP Participant in the event federal funds are not available.

## **II. WORKSITE RESPONSIBILITIES**

Worksite shall:

- A. Specify any and all supervisors who may have signatory authority for SYEP Participant's timesheets in Schedule A.
- B. Provide 14 jobs for SYEP Participants during the Term, which jobs shall be in accordance with the statement of duties specified in Schedule B.
- C. Neither ask for, nor accept any monetary consideration for providing the services described herein.
- D. To the extent required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) and all other applicable New York State and federal statutory, regulatory and constitutional non-discrimination provisions, including, but not limited to, Title VI of the Civil Rights Act of 1964 (P.L. 88-352), all as may be as amended, Worksite will not discriminate against any SYEP Participant because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status.
- E. Ensure that the work experience of SYEP Participants is in accordance with the program objectives of the SYEP, which, among other things, is to provide youth with a real work experience that will enhance their skills, as outlined in Schedule C, and foster the development of good work habits.
- F. Ensure a safe and healthy work environment for SYEP Participants.
- G. Take all necessary measures to provide skill training wherever possible and, to the maximum extent practicable, contribute to the occupational development, upward mobility, and employability of the SYEP Participants. Worksite acknowledges that most SYEP Participants are unskilled.



- H. Provide sufficient work to occupy the SYEP Participants during work hours and sufficient equipment and/or materials to enable SYEP Participants to carry out the work assignments.
- I. Provide full-time adult supervision of assigned SYEP Participants ensuring that there is at least one adult supervisor for every twelve (12) SYEP Participants.
- J. Maintain adequate attendance records in accordance with "Participant Time and Attendance Procedures" as established by ETA. Timesheets must be signed by both the Worksite supervisor and the SYEP Participant.
- K. Send all supervisors of SYEP Participants to participate in a brief Supervisor's Orientation at a time and location scheduled by ETA.
- L. Provide ETA staff with a written schedule of work hours for each SYEP Participant, which schedule(s) are hereby incorporated into this Agreement by reference.
- M. Notify ETA immediately of any injury and/or accident involving a participant and, for other than injuries and/or accidents, report to ETA any incidents or problems encountered by SYEP Participants and advise ETA of SYEP Participant who could benefit from special counseling as soon as practicable, given the severity of the incident or problem.
- N. Comply with all applicable New York State and Federal child labor laws, rules and regulations, including, but not limited to, the Workforce Investment Act of 1998 and regulations promulgated thereunder ("WIA"), all as may be amended.
- O. Grant authorized ETA staff, representatives of the Local Workforce Investment Board, and representatives of any State or Federal agencies administering funds under WIA, at all reasonable times, access to and the right to visit, unannounced, Worksite locations to monitor the service provided by Worksite under this Agreement.
- P. Comply with Federal and New York State laws, rules and regulations prohibiting sectarian, partisan or religious services, counseling, proselytizing instruction, or influence to SYEP Participants. WIA funds shall not be used for the promotion of any religious activity or utilized for any religious purposes. The County retains the exclusive right and authority to determine whether or not the Worksite is, and remains, in compliance with this provision.
- Q. By its signature below, Worksite hereby acknowledges that if it is negligent in carrying out the terms and conditions of this Agreement, it may not be used in the SYEP at a future date, and/or will be held financially responsible for costs deemed illegal by auditors or monitors. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded County, nor shall it constitute a waiver of the County's right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity, or pursuant to this Agreement.

### III. GENERAL PROVISIONS

- A. Termination. The County may, by written notice to Worksite effective immediately, terminate this Agreement in whole, or in part, or remove any SYEP Participant from any Worksite location, at any time (1) for the County's convenience; (2) upon the failure of Worksite to comply with the terms or conditions of this Agreement or any federal, state or local law, rule or regulation, including WIA; (3) in the event the federal funds supporting the SYEP are discontinued; or (4) upon bankruptcy, insolvency or closure of Worksite.
- B. Independent Contractor. In performing the services under this Agreement Worksite shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the County. In accordance with such status as an independent contractor, Worksite covenants and agrees that neither it nor its employees or agent will hold themselves out as, nor claim to be officers or employees of the County, or of any department, agency or unit thereof by reason hereof, and that it will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- C. Subcontracting/Assignment. Worksite shall not assign any of its rights, interest, or obligations under this Agreement, or subcontract any of the services to be performed by it under this Agreement. Worksite shall not reassign SYEP Participants to another Worksite location without the written permission of ETA.
- D. Pay-to Play. Pursuant to Section 10 of the County's "**Pay-to-Play Local Law**", (Local Law No. 13 of 2013, as amended) the regulatory and penalty provisions of the Pay-to-Play Local Law are incorporated by reference. A copy of the law may be requested from County's Department of General Services.
- E. Indemnification.
1. To the fullest extent permitted by law, Worksite shall defend, indemnify and hold harmless County and its officers, employees, contractors, agents, assignees and other representatives, from and against any and all claims, liabilities, expenses, costs, losses, damages and causes of action (including without limitation, reasonable attorneys' fees and costs of litigation and/or settlement) arising out of, directly or indirectly, the services performed and/or goods provided pursuant to this Agreement by Worksite or its officers, directors, members, partners, employees, SYEP Participants, contractors, agents, assignees or other representatives.
  2. Without limiting the foregoing, to the fullest extent permitted by law, Worksite specifically agrees to defend, indemnify and hold County harmless against claims, including claims by Worksite's customers and/or subcontractors, based on infringement of copyright, patent, trade secret, trademark, libel, slander, or invasion of privacy, arising out of, directly or indirectly, the services performed and/or goods provided by Worksite its officers, directors, partners, members, employees, contractors, agents, assignees or other representatives pursuant to this Agreement.

3. In the event that any claim is made or any action is brought against County arising out of, in connection with or otherwise relating to this Agreement either within or without the scope of Worksite's duties, obligations or applicable industry standards, or those of any of Worksite's respective officers, directors, partners, members, employees, contractors, agents, or other representative's; then County shall have the right to withhold further payments hereunder, for the purpose of set-off, in sufficient sums to cover the claims, liabilities, expenses, costs, losses, damages or causes of action. This remedy, if effected, shall not constitute the sole or exclusive remedy afforded County, nor shall it constitute a waiver of that the County's right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity, or pursuant to this Agreement.

F. General Release. The acceptance by Worksite or its assignees of the final payment under this Agreement (whether based on invoice, judgment of any court of competent jurisdiction, administrative or any other means) shall constitute and operate as a general release to County from any and all claims of Worksite arising out of the performance of this Agreement.

G. Set-Off Rights.

1. County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, County's right to withhold for the purposes of set-off any monies otherwise due to Worksite:
  - a. under this Agreement;
  - b. under any other agreement or contract with County, including any agreement or contract for a term commencing prior to or after the term of this Agreement; or
  - c. from County by operation of law.
2. County also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to County for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.
3. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded the County, nor shall it constitute a waiver of that the County's right to claim damages or otherwise refuse payment or to take any other action provided for by law, in equity, or pursuant to this Agreement.

H. Disputes. Except as otherwise provided by this Agreement, any dispute concerning this Agreement, which is not disposed of by the mutual consent of the parties hereto, shall be decided by the ETA or by its duly authorized representative for final resolution. Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed to in writing by the County Executive, or his or her designee, but must instead only be heard in the Supreme Court of the State of

New York, with venue in Orange County or, if appropriate, in the federal District Court with venue in the Southern District of New York, White Plains division.

- I. Modification. County reserves the right to update or change the provisions of this Agreement as conditions require, including, but not limited to for compliance with New York State or Federal laws or regulations. All modifications to this Agreement shall be in writing and executed by both parties. If Worksite does not agree to a modification necessary for compliance with New York State or Federal laws or regulations, this Agreement shall be deemed terminated, as of the date compliance with the subject law or regulation is required.
- J. Governing Law. This Agreement shall be governed by the laws of the State of New York, without giving effect to choice of law provisions. Worksite shall render all services under this Agreement in accordance with applicable provisions of all Federal, New York State and Local laws, rules and regulations as are in effect at the time services are rendered.
- K. Business Authorization and Registration; Service of Process. Worksite shall be properly authorized and registered to do business as required by the laws of the state of New York applicable to Worksite's business entity type. Regardless of the propriety or legality of Worksite's business authorization and registration status, as a condition of contract, Worksite shall agree to service of process as follows: In addition to the methods of service allowed by New York's Civil Practice Law and Rules, Worksite consents to service of process upon it by registered or certified mail, return receipt requested, to the address indicated in this Agreement. Service shall be complete upon Worksite's actual receipt of process, or upon County's receipt of the return by the United States Postal Service as refused or undeliverable. Worksite shall immediately notify County, in writing, via registered or certified mail, return receipt requested, of each change or address to which service of process can be made. Service by County to the last known address shall be sufficient.
- L. Notice.
  - 1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
    - a. via certified or registered United States mail, return receipt requested;
    - b. by personal delivery;
    - c. by overnight delivery service with a nationally recognized carrier (e.g. FedEx, UPS); or
  - 2. The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution. Notices shall be addressed as follows or to such different addresses as the parties may from time to time designate in accordance with subdivision 4 below:

**County**

Name: Orange County Employment & Training Administration

Title: Stephen Knob, Director

Address: 18 Seward Avenue, Middletown, NY 10940

Phone Number: (845) 346-3630

**Worksite**

Name: City of Newburgh

Title: Deidre Glenn, Director of Planning and Development

Address: 83 Broadway, Newburgh, NY 12550

Phone Number: (845) 569-7383

3. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein.
4. The parties may, from time to time, specify any new or different contact person or address in the United States as their address for purpose of receiving notice by notifying County, in writing, via registered or certified mail, return receipt requested, of each change.

**M. Binding Effect.**

This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

**N. Severability.**

If any part, term or provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations arising under such provisions, but the remainder of this Agreement shall be interpreted so as to carry out the intent of the parties in an equitable manner.

**Q. Compliance.**

1. Worksite and its officers, directors, partners, members, employees, contractors, agents, assignees or other representatives shall at all times comply with all applicable New York state and federal laws and regulations in the performance of this Agreement.
2. Worksite understands that it may be necessary for County to submit to governmental agencies or to a court of law part of or all of the data, analyses and/or conclusions developed in the performance of the Scope of Work as well as certification, payment applications or other documentation certified and/or signed by Worksite or its officers,

directors, partners, members, employees, contractors, agents, assignees or other representatives. Worksite is aware that there are significant state and/or federal civil and criminal penalties for submitting false information, including the possibility of fines and imprisonment. Worksite is responsible for such penalties resulting from false information submitted by Worksite or its officers, directors, partners, members, employees, contractors, agents, assignees or other representatives and shall, to the fullest extent permitted by law, defend, indemnify and hold harmless County and its officers, employees, contractors, agents, assignees and other representatives, from and against any and all claims, liabilities, expenses, costs, losses, damages and causes of action (including without limitation, reasonable attorneys' fees and costs of litigation and/or settlement) arising out of, directly or indirectly, the submission of any false information by Worksite or its subcontractors.

R. Waiver.

No covenant, condition or undertaking contained in this Agreement may be waived except by the written agreement of the parties. Forbearance or indulgence in any form by either party in regard to any covenant, condition or undertaking to be kept or performed by the other party shall not constitute a waiver thereof and, until complete satisfaction or performance of all such covenants, conditions and undertakings, the other party may be entitled to invoke any remedy available under this Agreement, despite any such forbearance or indulgence.

S. Entire Agreement.

This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof, and supersedes all prior representations, agreements and understandings, written or oral.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date(s) below written:

WORKSITE

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date


COUNTY OF ORANGE

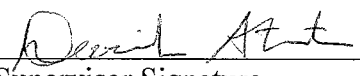
\_\_\_\_\_  
Steven M. Neuhaus  
County Executive

\_\_\_\_\_  
Date

## SCHEDULE A – WORKSITE SUPERVISOR(S)

If any representative of the Worksite, other than the signatory of this Agreement will be signing youth timesheets for the Worksite, please have each supervisor sign below and specify their Worksite:

1.  Tamm Miller 4/1/17  
Supervisor Signature Print Name Date  
Planning Department City Hall - 580 Broadway Newburgh, NY  
Worksite Location

2.  Derrick Stanton 4/1/2017  
Supervisor Signature Print Name Date  
City of Newburgh Recreation Department  
Worksite Location

3. \_\_\_\_\_  
Supervisor Signature Print Name Date  
\_\_\_\_\_  
Worksite Location

4. \_\_\_\_\_  
Supervisor Signature Print Name Date  
\_\_\_\_\_  
Worksite Location

5. \_\_\_\_\_  
Supervisor Signature Print Name Date  
\_\_\_\_\_  
Worksite Location

## **SCHEDULE B – SYEP Participant Job Duties**

### Office Clerk:

Basic Office Practice: Computer Skills, Filing, Typing, Answer Phones, etc.

### Junior Camp Counselor:

Under the direction of the Camp Director, the Jr. Camp Counselor is responsible for the direct supervision of camp participants in a seasonal camp setting. Maintain positive relationships with parent and other staff. Performs other duties as assigned.

### Camp – Swimming Pool Aide:

This position is responsible for performing a variety of roles as needed at the swimming pool facility including cashier, concession worker, top-of slide attendant and errand runner.

### Camp- Jr. Recreation Laborer:

Assist regular maintenance staff in keeping park areas, ground, buildings and facilities clean by picking up and performing proper disposal of trash, recyclables and compostable debris. Perform grounds maintenance including mowing and weed whipping and care for flowers beds and hedges. Maintain athletic fields and natural areas. Perform custodial work in park buildings and facilities including cleaning restrooms. Support the delivery of program and events by providing maintenance t support to recreation staff that meets the needs and demands of the program and events. Perform and foster an environment of safe work practices and report safety issues promptly to appropriate staff.



## **SCHEDULE C – Secretary of the US Department of Labor SCANS Criteria**

### **THE SECRETARY’S COMMISSION ON ACHIEVING NECESSARY SKILL (SCANS)**

What skills will prepare our youth to participate in the modern workplace? What skill levels do entry-level jobs require? In 1990, the Secretary of the Department of Labor, establishment the Secretary’s Commission on Achieving Necessary Skill (SCANS)

#### **WHAT ARE WORKPLACE SKILLS?**

To find meaningful work, youth need to master certain workplace skill, SCANS calls these essential “foundation skill” and “competencies”.

Workers use foundation skills-academic and behavioral characteristics-to build competencies on.

#### **Foundation skills fall into three domains:**

- **Basic Skill**-reading, writing, speaking, listening, and knowing arithmetic and mathematical concept;
- **Thinking Skills**-reasoning, making decisions, thinking creatively, solving problems, seeing things in the mind’s eye and knowing how to learn: and
- **Personal Qualities**-responsibility, self-esteem, sociability, self-management, integrity and honesty.

**Competencies, however, more closely relate to what people actually do at work. The competencies the SCANS has identified fall into five domains:**

- **Resources** - identifying, organizing, planning, and allocating time, money, materials, and workers
- **Interpersonal Skills** - negotiating, exercising leadership, working with diversity, teaching others new skills, serving clients and customers, and participating as a team member.
- **Information Skill** - using computer to process information and acquiring and evaluating, organizing, and maintaining, and interpreting and communicating information
- **Systems Skill** - understanding systems, monitoring and correcting system performance, and improving and designing systems; and
- **Technology Utilization Skills** - selecting technology, applying technology to a task, and maintaining and troubleshooting technology

ORDINANCE NO.: \_\_\_\_\_ - 2017

OF

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

**AN ORDINANCE AMENDING SECTION 20-3 ENTITLED “ORDER OF BUSINESS”**

**BE IT ORDAINED** by the City Council of the City of Newburgh that Section 20-3 of the Code of Ordinances is hereby amended to read as follows:

**Section 1.** Section 20-3. Order of Business.

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 any matter of City business ~~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.~~ J. Further comments from the Council.

**Section 2.** This Ordinance shall take effect at the next City Council meeting subsequent to its adoption.

**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. The Public Comment period shall be limited to 1 hour.

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 5 minutes on a given topic. The City Clerk shall keep a record of the time and shall inform the presiding officer when the 5 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**

## **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 that 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 ~~establishing~~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 possessed~~in the possession~~ or used ~~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: City departments~~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 ~~or~~ 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 the elected official 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 Information Systems 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 similar 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 wWeb 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 ~~w~~[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 or non-employees of any provision or part of this policy shall be reported immediately to the department head and the City Manager.

bc. 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, ~~dis~~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 or improper 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 the risk of lost data. 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.

~~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.

**dfg.** 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.

**egh.** 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).

ii. 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 discipline early actions might be may include but are not limited to:

- (i) Verbal and/or written counseling.
- (ii) PCElectronic devices will be "locked down" to run only authorized standard software or other limitations on computerelectronic 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

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**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 that are the property of the City and are provided to facilitate the effective and efficient conduct of City business. Users 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 establishing 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 possessed or used 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: City departments 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 or 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 the elected official 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 Information Systems 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 capabilities similar 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 or non-employees 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 or improper 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 the risk of lost data. 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.

\_\_\_\_\_  
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

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