

RESOLUTION NO.: 130 -2012

OF

AUGUST 13, 2012

A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO WILLIAM ROSE
TO THE PREMISES KNOWN AS 3 MARNE AVENUE
(SECTION 7, BLOCK 7, LOT 8.1)

WHEREAS, on January 6, 2012, the City of Newburgh conveyed property located at 3 Marne Avenue, being more accurately described on the official Tax Map of the City of Newburgh as Section 7, Block 7, Lot 8.1, to William Rose; and

WHEREAS, Mr. Rose has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, the appropriate departments have reviewed their files and advised that the covenants have been complied with, and recommends such release be granted; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4 and 5 of the aforementioned deed.

RESOLUTION NO.: 131 -2012

OF

AUGUST 13, 2012

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO JCL MEDIA, INC.
TO THE PREMISES KNOWN AS 65 LIBERTY STREET
(SECTION 39, BLOCK 5, LOT 15.1) AND 65 LIBERTY STREET REAR
(SECTION 39, BLOCK 5, LOT 15.2)**

WHEREAS, on June 8, 2006, the City of Newburgh conveyed property located at 65 Liberty Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 39, Block 5, Lot 15.1 and 65 Liberty Street Rear, being more accurately described on the official Tax Map of the City of Newburgh as Section 39, Block 5, Lot 15.2, to JCL Media, Inc.; and

WHEREAS, on November 23, 2010, the City of Newburgh issued a correction deed to JCL Media, Inc. for the sole purpose of amending the use to allow commercial use on the ground floor, and residential use on the second and third floors of the Premises identified as 65 Liberty Street as provided for in covenant number one (1); and

WHEREAS, JCL Media, Inc., by their attorney, has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, the appropriate departments have reviewed their files and advised that the covenants have been complied with, and recommends such release be granted; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4, 5 and 6 of the aforementioned deed.

RESOLUTION NO.: 132 - 2012

OF

AUGUST 13, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) CONCERNING AN AMENDMENT OF SECTIONS 300-26 AND 300-80 OF THE ZONING ORDINANCE OF THE CITY OF NEWBURGH AND SECTION 158-2, "ACTIONS REQUIRING AND NOT REQUIRING ENVIRONMENTAL IMPACT STATEMENTS" OF THE CODE OF ORDINANCES, DECLARING THE PROJECT TO BE AN UNLISTED ACTION, CONSIDERING AN ENVIRONMENTAL ASSESSMENT FORM(EAF), REFERRING SAME TO THE ORANGE COUNTY PLANNING DEPARTMENT AS REQUIRED BY SECTION 239 OF THE GENERAL MUNICIPAL LAWS AND SCHEDULING A PUBLIC HEARING

WHEREAS, by Resolution No. 87-2012 of June 18, 2012, the City Council of the City of Newburgh accepted and authorized the City Manager to take other steps necessary and appropriate to implement the recommendations in the Streamlining Newburgh's Land Use Process report and recommendations; and

WHEREAS, in furtherance of the City's goal to streamline its land use process, the City is proposing to adopt an amendments to Chapter 158 and Chapter 300 of the Code of Ordinances, as follows:

1. Section 158-2: to eliminate the requirement for an environmental impact statement for actions which do not exceed certain thresholds set forth in New York State regulations;
2. Section 300-26: to eliminate the requirement of a certificate of appropriateness for certain activities within the City's historic and architectural design districts; and
3. Section 300-80: to eliminate the Architectural Review Commission advisory opinion to the Zoning Board of Appeals for applications for variances within the City's historic and architectural design districts; and

WHEREAS, in compliance with SEQRA, the City Council of the City of Newburgh wishes to assume Lead Agency status, declare the action to be an Unlisted action, proposes to accept as complete an Environmental Assessment Form ("EAF"), refer the proposed ordinance to the Orange County Planning Department pursuant to General Municipal Law Section 239, and schedule a public hearing in connection with the proposed legislation.

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

1. That the City Council of the City of Newburgh hereby declares itself as the Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6; and
2. Classifies the action as an Unlisted Action; and
3. Proposes to accept as complete the Environmental Assessment Form ("EAF") attached hereto;
4. Refers the proposed Ordinance to the Orange County Planning Department as required by General Municipal Law Section 239; and
1. Schedules a public hearing to receive comments concerning "A Local Law Amending Article 158 Entitled 'Environmental Quality Review', Section 158-2, 'Actions Requiring and Not Requiring Environmental Impact Statements' of the Code of Ordinances of the City of Newburgh" and "An Ordinance to Amend Chapter 300 entitled "Zoning" of the Code of Ordinances of the City of Newburgh to Exempt Certain Activities from Requiring a Certificate of Appropriateness from the Architectural Review Commission and to Eliminate the Architectural Review Commission Advisory Opinion in Applications for Variances within in the Historic or Architectural Design Districts to the Zoning Board of Appeals"; 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 10th day of September, 2012, at the Activity Center, 401 Washington Street, Newburgh, New York.

LOCAL LAW NO.: _____ - 2012

OF

A LOCAL LAW AMENDING ARTICLE 158 ENTITLED
“ENVIRONMENTAL QUALITY REVIEW”
SECTION 158-2, “ACTIONS REQUIRING AND NOT REQUIRING
ENVIRONMENTAL IMPACT STATEMENTS”
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

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

SECTION 1 - TITLE

This Local Law shall be referred to as “A Local Law Amending Article 158 Entitled ‘Environmental Quality Review’, Section 158-2, ‘Actions Requiring and Not Requiring Environmental Impact Statements’ of the Code of Ordinances of the City of Newburgh”.

SECTION 2 - AMENDMENT

Article 158, Section 158-2, “Actions Requiring and Not Requiring Environmental Impact Statements” is hereby amended to read as follows:

§158-2. Actions requiring and not requiring environmental impact statements and not requiring environmental assessment forms.

All actions ~~that may likely to have a significant adverse impact effect~~ upon the environment within the meaning of Section 617.711 of Title 6 of NYCRR ~~and defined as "Type I" actions in Section 617.4 of Title 6 of NYCRR~~ shall require the preparation of an environmental impact statement, unless they are unlisted actions as to which the relevant local reviewing agency determines that a conditional negative declaration is appropriate. Type II actions, as described in Section 617.5 therein, or determined to be such under local law will not require the preparation of an environmental assessment form ~~impact statement.~~

SECTION 3 - VALIDITY

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

Underlining denotes additions

~~Strikethrough~~ denotes deletions

SECTION 4 - EFFECTIVE DATE

This Local Law and shall be effective in accordance with the provisions of New York State Municipal Home Rule Law and shall immediately.

Underlining denotes additions
~~Strikethrough~~ denotes deletions

ORDINANCE NO.: _____-2012

OF

AN ORDINANCE TO AMEND CHAPTER 300 ENTITLED "ZONING"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
TO EXEMPT CERTAIN ACTIVITIES FROM REQUIRING
A CERTIFICATE OF APPROPRIATENESS FROM THE ARCHITECTURAL REVIEW
COMMISSION AND TO ELIMINATE THE ARCHITECTURAL REVIEW COMMISSION
ADVISORY OPINION IN APPLICATIONS FOR VARIANCES
WITHIN IN THE HISTORIC OR ARCHITECTURAL DESIGN DISTRICTS
TO THE ZONING BOARD OF APPEALS

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 300 of the Code of Ordinances shall be amended as follows:

Section 1: § 300-26. Certificate of appropriateness.

A. Certificate required. No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a landmark, nor shall any person make any material change in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements visible from a public street or alley which affect the appearance and cohesiveness of a district and its designated properties, without first obtaining a certificate of appropriateness.

1. Exemptions. The following activities do not require a certificate of appropriateness under this Article:

- a. Repair, replacement and installation of electrical, plumbing, heating and ventilation systems, provided that such work does not affect the exterior of the structure.
- b. Caulking, weather-stripping, glazing and repainting of windows.
- c. Repair of porches, cornices, exterior siding, doors balustrades, stairs or other trim when the repair is done in-kind to match existing material and form.
- d. Repair of storm windows (exterior, interior or wood), provided they match the shape and size of historic windows and that the meeting rail coincides with that of the historic window; color should match trim.

Underlining _____ denotes additions

| Strikethrough denote deletions

- e. Installation of new window jambs or jamb liners.
- f. Repair or replacement of awnings when work is done in-kind to match existing materials and form.
- g. Roof repair of historic roofing with material that matches the existing material in form or better.
- h. Repair of gutters and downspouts.
- i. Installation of insulation where exterior siding or trim is not altered or damaged.
- j. Repair of existing roads, driveways, sidewalks and curbs provided that work is done so that there are no changes in dimension or configuration of those features.
- k. Exterior lead paint abatement that includes scraping and repainting of exterior work and masonry surfaces.
- l. Repair of fencing when work is done in-kind to match existing material and form.
- m. Repair or replacement of water, gas, storm or sewer lines.
- n. Emergency repairs necessitated by a casualty to the property (fire, storm, flood, etc.).

Section 2: § 300-80. Procedures.

The powers and duties of the Zoning Board of Appeals shall be exercised in accordance with the procedures set forth in this article plus the following additional procedures:

- A. Strict compliance. The Zoning Board of Appeals shall act in strict accordance with the procedures specified by law and by this chapter.
- B. Fees. All appeals made to the Zoning Board of Appeals shall be accompanied by the fee established by the City Council as provided for § 300-83. The Board may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal is under § 300-78 hereof and is partially or wholly successful.
- C. Contents of applications. Each appeal shall fully set forth the circumstances of the case. Every appeal shall refer to the specific provision of the chapter involved and shall exactly set forth, as the case may be, the interpretation that is claimed.
- D. Hearing appeals. The jurisdiction of the Zoning Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order,

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~~Strikethrough~~ denote deletions

requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the City.

- E. Time of appeal. Such appeal shall be taken within 60 days after the filing in the City Clerk's office of any order, requirement, decision, interpretation, or determination of the administrative official charged with the enforcement of such ordinance or local law by filing with such administrative official and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- F. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certified to the Zoning Board of Appeals, after the notice of appeal shall have been filed with the administrative official, that by reasons of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
- G. Public hearings. The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and the applicant shall be notified of such date. At least 10 days prior to such hearing the Secretary of the Board shall mail, by regular mail, at the applicant's expense, a notice of such hearing and of the substance of the appeal to the owners of all properties within 300 feet of the exterior boundaries of the property affected by the appeal, provided that no such mailing or proof of mailing shall be required where the application is for an area variance of less than three feet in regard to any front, rear or side yard setback. At least 10 days prior to such hearing, the Secretary of the Zoning Board of Appeals, at the expense of the applicant to be paid in advance, shall cause to be published in the official newspaper of the City a notice of such hearing and of the substance of the appeal. Prior to said hearing, the applicant shall submit to the Board affidavits of the Secretary of the Board swearing that the required mailings and publication have been performed, which documents shall become part of the application. For the purpose of the mailings required by this section, the term "owner" shall be construed to mean the owner as indicated on the assessment roll of the City of Newburgh.
- H. Planning Board advisory opinion. The Zoning Board of Appeals is not required to but may, in its discretion, refer any requests for appeals or applications for variances to the Planning Board for review and recommendations. The Zoning Board shall defer any decision on these

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| ~~Strikethrough~~ denote deletions

matters pending the receipt of a report from the Planning Board. If no report is received from the Planning Board within 31 days, the Zoning Board of Appeals may render its decision without said report.

~~I. Architectural Review Commission advisory opinion. The Zoning Board of Appeals shall, within 10 days of its submission, refer any requests for appeals or applications for variances within historic districts or architectural design districts to the Architectural Review Commission for review and recommendations. The Zoning Board of Appeals shall defer any decision on these matters pending the receipt of a report from the Architectural Review Commission.~~

J. I. Waterfront Advisory Committee. Whenever a request for appeal or application for variance involves the City's waterfront area, the Zoning Board of Appeals shall refer a copy of a completed coastal assessment form (CAF) to the Waterfront Advisory Committee within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the Waterfront Advisory Committee with reference to the consistency of the proposed action as set forth in Chapter 296 of the Code of the City of Newburgh, known as the "City of Newburgh Waterfront Consistency Review Law." In the event that the Waterfront Advisory Committee recommendation is not forthcoming within 30 days following referral of the CAF, the Zoning Board of Appeals shall make its decision without the benefit of the Waterfront Advisory Committee recommendation.

~~K.~~ K. Notice to Park Commission and County Planning Department. At least 10 days before such hearing, the Board of Appeals shall mail notices thereof to the regional State Park Commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal and to the Orange County Planning Department, as required by § 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of such proposed action, as defined in Subdivision 1 of § 239-m of the General Municipal Law.

~~L.~~ L. Time of decision. The Zoning Board of Appeals shall decide upon an appeal within 62 days after the conduct of the public hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.

~~M.~~ M. Filing of decision or action. The decision of the Zoning Board of Appeals on the appeal shall be filed in the office of the City Clerk or the zoning office, if such office has been established, within five business days after the day such decision is rendered and a copy thereof mailed to the applicant.

~~N.~~ N. Compliance with Environmental Quality Review Act. The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations.

Underlining _____ denotes additions

~~Strikethrough~~ denote deletions

| ⊖ N. Rehearing. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reheard may be made by any member of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing, the Board may reverse, modify, or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

Section 3. This ordinance shall take effect immediately.

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| ~~Strike through~~ denote deletions



Edward A. Diana
County Executive

Orange County Department of Planning Submittal Form for Mandatory Review of Local Planning Action as per NYS General Municipal Law §239-l,m, & n

Referral ID#
County/Community

This form is to be completed by the local board having jurisdiction. Submittals from applicants will not be accepted unless coordinated with both the local board having jurisdiction and the County Department of Planning.

Please include all materials that are part of a "full statement" as defined by NYS GML §239-m (i.e. "all materials required by and submitted to the referring body as an application on a proposed action").

Municipality:

City of Newburgh

Tax Map #:

Local Referring Board:

City Council

Tax Map #:

Applicant:

City Council

Tax Map #:

Project Name:

Streamlining Newburgh's Land Use Process

Local File No.:

Location of Project Site:

City Wide

Size of Parcel*:

*If more than one parcel, please include sum of all parcels.

Reason for County Review:

Referral pursuant to GML § 239-m.

Current Zoning District (Include any overlays):

Type of Review:

Comprehensive Plan Update/Adoption

Zoning Amendment

Zoning District Change from _____ to _____

Ordinance Modification (cite section): §§ 300-26 and 300-80

Local Law

Amending Article § 158-2.

Site Plan

Sq. feet proposed (non-residential only): _____

Which approval is the applicant currently seeking?

SKETCH / PRELIM / FINAL (circle one)

Subdivision

Number of lots proposed: _____

Which approval is the applicant currently seeking?

SKETCH / PRELIM / FINAL (circle one)

Special Use Permit

Lot Line Change

Variance

AREA / USE (circle one) _____

Other

Is this an update to a previously submitted referral? YES / NO (circle one)

Local board comments or elaboration:

Signature of local official

Date

Title

Municipal Contact Phone Number: _____

If you would like the applicant to be cc'd on this letter, please provide the applicant's address:

Please return, along with full statement, to: Orange County Dept. of Planning 124 Main St. Goshen, NY 10924

Question or comments, call: 845-615-3840 or email: planning@orangecountygov.com

617.20
Appendix A
State Environmental Quality Review
FULL ENVIRONMENTAL ASSESSMENT FORM

Purpose: The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

Full EAF Components: The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project:

Part 1

Part 2

Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact(s) and, therefore, is one which **will not** have a significant impact on the environment, therefore a **negative declaration will be prepared**.
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED negative declaration will be prepared.***
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a **positive declaration will be prepared**.

*A Conditioned Negative Declaration is only valid for Unlisted Actions

Name of Action

Name of Lead Agency

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

PART 1--PROJECT INFORMATION
Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Streamlining Newburgh's Land Use Process

Location of Action (include Street Address, Municipality and County)

City Wide - City of Newburgh, New York

Name of Applicant/Sponsor City Council - City of Newburgh

Address 83 Broadway

City / PO Newburgh State NY Zip Code 12550

Business Telephone 845-569-7301

Name of Owner (if different) _____

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

Amending sections 300-26 and 300-80 of the zoning ordinance of the City of Newburgh and section 158-2 of the code of ordinances of the City of Newburgh.
- Amendment to section 300-26 will eliminate the requirement of a Certificate of Appropriateness for de minimis activities within the City's historic and Architectural design districts.
-Amendment to section 300-80 will eliminate the Architectural Review Commission's advisory opinion to the Zoning Board of Appeals for applications for variances within the City's historic and architectural design districts, leaving in place requirements for Certificate of Appropriateness for same actions.
-Amendment to 158-2 will eliminate the requirement for an environmental impact statement for actions which do not exceed certain thresholds set forth in New York State regulations.

Please Complete Each Question--Indicate N.A. if not applicable

A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Other _____

2. Total acreage of project area: N/A acres.

| APPROXIMATE ACREAGE | PRESENTLY | AFTER COMPLETION |
|--|-------------|------------------|
| Meadow or Brushland (Non-agricultural) | _____ acres | _____ acres |
| Forested | _____ acres | _____ acres |
| Agricultural (Includes orchards, cropland, pasture, etc.) | _____ acres | _____ acres |
| Wetland (Freshwater or tidal as per Articles 24,25 of ECL) | _____ acres | _____ acres |
| Water Surface Area | _____ acres | _____ acres |
| Unvegetated (Rock, earth or fill) | _____ acres | _____ acres |
| Roads, buildings and other paved surfaces | _____ acres | _____ acres |
| Other (Indicate type) _____ | _____ acres | _____ acres |

3. What is predominant soil type(s) on project site? N/A

- a. Soil drainage: Well drained _____% of site Moderately well drained _____% of site.
 Poorly drained _____% of site

b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? _____ acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? Yes No

a. What is depth to bedrock _____ (in feet)

5. Approximate percentage of proposed project site with slopes:

- 0-10% N/A% 10- 15% _____% 15% or greater _____%

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? Yes No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? Yes No

8. What is the depth of the water table? N/A (in feet)

9. Is site located over a primary, principal, or sole source aquifer? Yes No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? Yes No

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? Yes No

According to:

Identify each species:

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

Yes No

Describe:

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

Yes No

If yes, explain:

14. Does the present site include scenic views known to be important to the community? Yes No

15. Streams within or contiguous to project area:

N/A

a. Name of Stream and name of River to which it is tributary

16. Lakes, ponds, wetland areas within or contiguous to project area:

N/A

b. Size (in acres):

17. Is the site served by existing public utilities? Yes No
- a. If **YES**, does sufficient capacity exist to allow connection? Yes No
- b. If **YES**, will improvements be necessary to allow connection? Yes No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? Yes No
20. Has the site ever been used for the disposal of solid or hazardous wastes? Yes No

B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).
- a. Total contiguous acreage owned or controlled by project sponsor: N/A acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles: N/A (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. N/A %
- f. Number of off-street parking spaces existing N/A; proposed N/A
- g. Maximum vehicular trips generated per hour: N/A (upon completion of project)?
- h. If residential: Number and type of housing units:
- | | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially | _____ | _____ | _____ | _____ |
| Ultimately | _____ | _____ | _____ | _____ |
- i. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; _____ length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? _____ ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? N/A tons/cubic yards.
3. Will disturbed areas be reclaimed Yes No N/A
- a. If yes, for what intended purpose is the site being reclaimed?
-
- b. Will topsoil be stockpiled for reclamation? Yes No
- c. Will upper subsoil be stockpiled for reclamation? Yes No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? N/A acres.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

Yes No

6. If single phase project: Anticipated period of construction: N/A months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated _____ (number)

b. Anticipated date of commencement phase 1: _____ month _____ year, (including demolition)

c. Approximate completion date of final phase: _____ month _____ year.

d. Is phase 1 functionally dependent on subsequent phases? Yes No

8. Will blasting occur during construction? Yes No

9. Number of jobs generated: during construction N/A; after project is complete N/A

10. Number of jobs eliminated by this project N/A.

11. Will project require relocation of any projects or facilities? Yes No

If yes, explain:

12. Is surface liquid waste disposal involved? Yes No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount _____

b. Name of water body into which effluent will be discharged _____

13. Is subsurface liquid waste disposal involved? Yes No Type _____

14. Will surface area of an existing water body increase or decrease by proposal? Yes No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? Yes No

16. Will the project generate solid waste? Yes No

a. If yes, what is the amount per month? _____ tons

b. If yes, will an existing solid waste facility be used? Yes No

c. If yes, give name _____; location _____

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes No

e. If yes, explain:

17. Will the project involve the disposal of solid waste? Yes No

a. If yes, what is the anticipated rate of disposal? _____ tons/month.

b. If yes, what is the anticipated site life? _____ years.

18. Will project use herbicides or pesticides? Yes No

19. Will project routinely produce odors (more than one hour per day)? Yes No

20. Will project produce operating noise exceeding the local ambient noise levels? Yes No

21. Will project result in an increase in energy use? Yes No

If yes, indicate type(s)

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day N/A gallons/day.

24. Does project involve Local, State or Federal funding? Yes No

If yes, explain:

25. Approvals Required:

| | | | Type | Submittal Date |
|------------------------------------|---|--|----------------------------------|-----------------------|
| City, Town, Village Board | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ | _____ |
| | | | _____ | _____ |
| | | | _____ | _____ |
| City, Town, Village Planning Board | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ | _____ |
| | | | _____ | _____ |
| | | | _____ | _____ |
| City, Town Zoning Board | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ | _____ |
| | | | _____ | _____ |
| | | | _____ | _____ |
| City, County Health Department | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ | _____ |
| | | | _____ | _____ |
| | | | _____ | _____ |
| Other Local Agencies | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ | _____ |
| | | | _____ | _____ |
| | | | _____ | _____ |
| Other Regional Agencies | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | <u>Referral review by Orange</u> | <u>August 3, 2012</u> |
| | | | <u>County Department of</u> | _____ |
| | | | <u>Planning</u> | _____ |
| | | | _____ | _____ |
| State Agencies | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ | _____ |
| | | | _____ | _____ |
| | | | _____ | _____ |
| Federal Agencies | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | _____ | _____ |
| | | | _____ | _____ |
| | | | _____ | _____ |

C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? Yes No

If Yes, indicate decision required:

- | | | | |
|--|---|--|--------------------------------------|
| <input checked="" type="checkbox"/> Zoning amendment | <input type="checkbox"/> Zoning variance | <input type="checkbox"/> New/revision of master plan | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Site plan | <input type="checkbox"/> Special use permit | <input type="checkbox"/> Resource management plan | <input type="checkbox"/> Other |

2. What is the zoning classification(s) of the site?

Since streamlining includes the entire city all zoning districts are involved, particularly those in the historic district.

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

N/A

4. What is the proposed zoning of the site?

N/A

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? Yes No

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

N/A

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? Yes No

9. If the proposed action is the subdivision of land, how many lots are proposed? N/A

a. What is the minimum lot size proposed? _____

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? Yes No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

Yes No

a. If yes, is existing capacity sufficient to handle projected demand? Yes No

12. Will the proposed action result in the generation of traffic significantly above present levels? Yes No

a. If yes, is the existing road network adequate to handle the additional traffic. Yes No

D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Richard F. Herbek Date _____

Signature _____

Title City Manager

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

PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

General Information (Read Carefully)

- ! In completing the form the reviewer should be guided by the question: Have my responses and determinations been **reasonable?** The reviewer is not expected to be an expert environmental analyst.
- ! The **Examples** provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- ! The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- ! The number of examples per question does not indicate the importance of each question.
- ! In identifying impacts, consider long term, short term and cumulative effects.

Instructions (Read carefully)

- a. Answer each of the 20 questions in PART 2. Answer **Yes** if there will be **any** impact.
- b. **Maybe** answers should be considered as **Yes** answers.
- c. If answering **Yes** to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily **significant**. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the **Yes** box in column 3. A **No** response indicates that such a reduction is not possible. This must be explained in Part 3.

| 1 | 2 | 3 |
|--------------------------|------------------------|---|
| Small to Moderate Impact | Potential Large Impact | Can Impact Be Mitigated by Project Change |

Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|--|
| • Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Construction on land where the depth to the water table is less than 3 feet. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Construction of paved parking area for 1,000 or more vehicles. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Construction that will continue for more than 1 year or involve more than one phase or stage. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

| | 1 Small to Moderate Impact | 2 Potential Large Impact | 3 Can Impact Be Mitigated by Project Change |
|---|-------------------------------------|-----------------------------------|---|
| • Construction or expansion of a sanitary landfill. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Construction in a designated floodway. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | | |

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

NO YES

| | | | |
|------------------------|--------------------------|--------------------------|---|
| • Specific land forms: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | | |

Impact on Water

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

NO YES

Examples that would apply to column 2

| | | | |
|--|--------------------------|--------------------------|---|
| • Developable area of site contains a protected water body. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Dredging more than 100 cubic yards of material from channel of a protected stream. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Extension of utility distribution facilities through a protected water body. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Construction in a designated freshwater or tidal wetland. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | | |

4. Will Proposed Action affect any non-protected existing or new body of water?

NO YES

Examples that would apply to column 2

| | | | |
|--|--------------------------|--------------------------|---|
| • A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Construction of a body of water that exceeds 10 acres of surface area. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | | |

| | | |
|--------------------------------|------------------------------|---|
| 1 | 2 | 3 |
| Small to Moderate Impact | Potential Large Impact | Can Impact Be Mitigated by Project Change |

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

NO YES

Examples that would apply to column 2

- | | | | |
|--|--|--|---|
| <ul style="list-style-type: none"> • Proposed Action would change flood water flows • Proposed Action may cause substantial erosion. • Proposed Action is incompatible with existing drainage patterns. • Proposed Action will allow development in a designated floodway. • Other impacts: | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
|--|--|--|---|

IMPACT ON AIR

7. Will Proposed Action affect air quality?

NO YES

Examples that would apply to column 2

- | | | | |
|---|--|--|---|
| <ul style="list-style-type: none"> • Proposed Action will induce 1,000 or more vehicle trips in any given hour. • Proposed Action will result in the incineration of more than 1 ton of refuse per hour. • Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour. • Proposed Action will allow an increase in the amount of land committed to industrial use. • Proposed Action will allow an increase in the density of industrial development within existing industrial areas. • Other impacts: | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
|---|--|--|---|

IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?

NO YES

Examples that would apply to column 2

- | | | | |
|---|--------------------------|--------------------------|---|
| <ul style="list-style-type: none"> • Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
|---|--------------------------|--------------------------|---|

| | 1 Small to Moderate Impact | 2 Potential Large Impact | 3 Can Impact Be Mitigated by Project Change |
|---|-------------------------------------|-----------------------------------|---|
| • Removal of any portion of a critical or significant wildlife habitat. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Application of pesticide or herbicide more than twice a year, other than for agricultural purposes. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | | |

9. Will Proposed Action substantially affect non-threatened or non-endangered species?
 NO YES

Examples that would apply to column 2

| | | | |
|--|--------------------------|--------------------------|---|
| • Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | | |

IMPACT ON AGRICULTURAL LAND RESOURCES

10. Will Proposed Action affect agricultural land resources?
 NO YES

Examples that would apply to column 2

| | | | |
|--|--------------------------|--------------------------|---|
| • The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Construction activity would excavate or compact the soil profile of agricultural land. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

| | 1 Small to Moderate Impact | 2 Potential Large Impact | 3 Can Impact Be Mitigated by Project Change |
|---|-------------------------------------|-----------------------------------|---|
| • The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | | |

IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

NO YES

Examples that would apply to column 2

| | | | |
|---|--------------------------|--------------------------|---|
| • Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Project components that will result in the elimination or significant screening of scenic views known to be important to the area. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| | | | |

IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?

NO YES

Examples that would apply to column 2

| | | | |
|---|--------------------------|--------------------------|---|
| • Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Any impact to an archaeological site or fossil bed located within the project site. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

| | | | |
|--|--------------------------------|------------------------------|---|
| | 1 | 2 | 3 |
| | Small to Moderate Impact | Potential Large Impact | Can Impact Be Mitigated by Project Change |

• Other impacts:

Yes

No

IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?

NO

YES

Examples that would apply to column 2

• The permanent foreclosure of a future recreational opportunity.

Yes

No

• A major reduction of an open space important to the community.

Yes

No

• Other impacts:

Yes

No

IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?

NO

YES

List the environmental characteristics that caused the designation of the CEA.

Examples that would apply to column 2

• Proposed Action to locate within the CEA?

Yes

No

• Proposed Action will result in a reduction in the quantity of the resource?

Yes

No

• Proposed Action will result in a reduction in the quality of the resource?

Yes

No

• Proposed Action will impact the use, function or enjoyment of the resource?

Yes

No

• Other impacts:

Yes

No

| | | |
|--------------------------------|------------------------------|---|
| 1 | 2 | 3 |
| Small to Moderate Impact | Potential Large Impact | Can Impact Be Mitigated by Project Change |

IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|--|
| • Alteration of present patterns of movement of people and/or goods. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Proposed Action will result in major traffic problems. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|--|
| • Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|--|
| • Blasting within 1,500 feet of a hospital, school or other sensitive facility. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Odors will occur routinely (more than one hour per day). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Proposed Action will remove natural barriers that would act as a noise screen. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

| | 1 Small to Moderate Impact | 2 Potential Large Impact | 3 Can Impact Be Mitigated by Project Change |
|--|-------------------------------------|-----------------------------------|---|
| • Proposed Action will set an important precedent for future projects. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Proposed Action will create or eliminate employment. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?

NO YES

If Any Action in Part 2 Is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3

Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

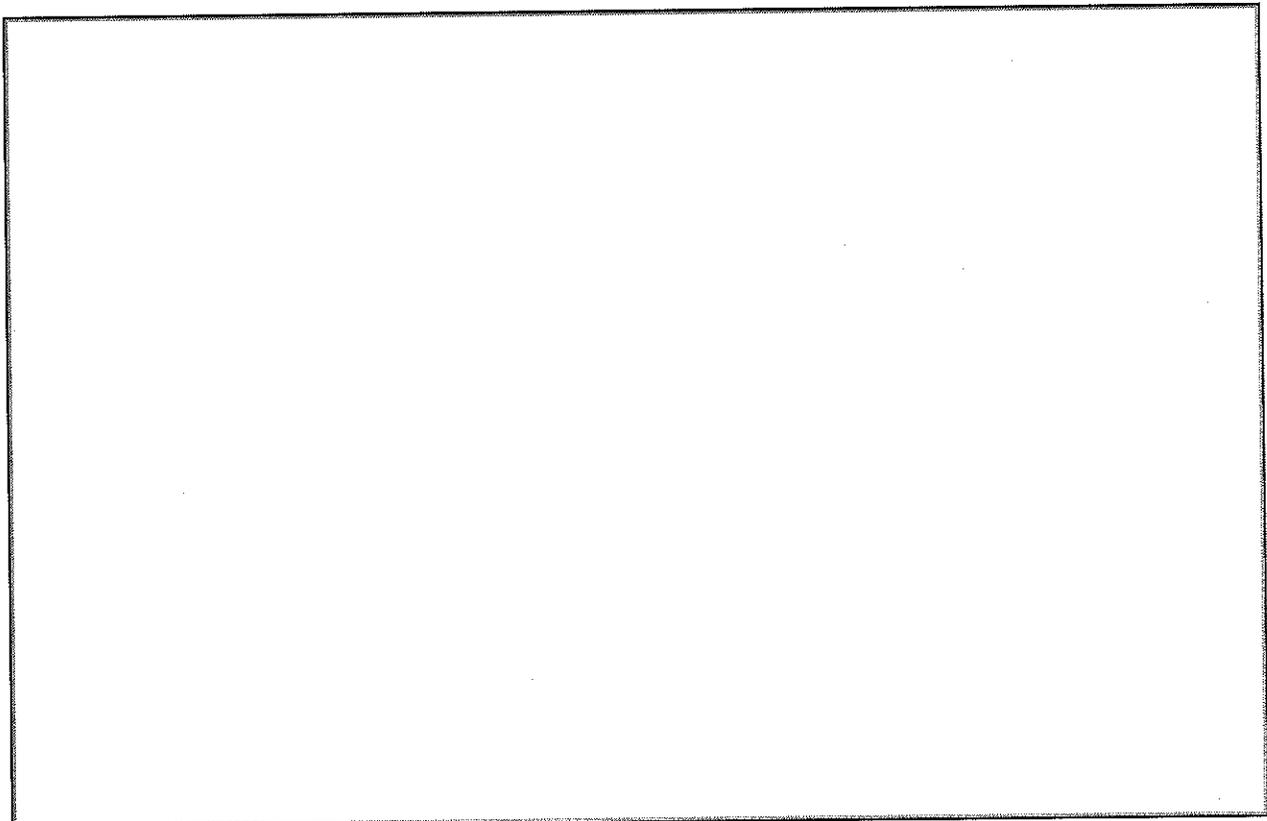
Instructions (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is **important**.

To answer the question of importance, consider:

- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.



RESOLUTION NO.: 133 - 2012

OF

AUGUST 13, 2012

RESOLUTION AMENDING RESOLUTION NO: 238-2011,
THE 2012 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$53,280.00 FROM POLICE SALARY TO POLICE OVERTIME
TO PROVIDE FOR POLICE OVERTIME OVERAGE

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 238-2011, the 2012 Budget of the City of Newburgh, is hereby amended as follows:

| | <u>Decrease</u> | <u>Increase</u> |
|---|-----------------|-----------------|
| A.3120 Police Department 0101 Salary | \$53,280.00 | |
| A.3120 Police Department 0103 Overtime | | \$53,280.00 |

RESOLUTION NO.: 134-2012

OF

AUGUST 13, 2012

**A RESOLUTION TO AUTHORIZE THE AWARD OF A BID AND
THE EXECUTION OF A CONTRACT WITH PEAK POWER SYSTEMS, INC.
FOR TO MANUFACTURE A BACK UP GENERATOR FOR THE WASTE WATER
TREATMENT PLANT AT A BASE BID COST OF \$131,599.00**

WHEREAS, the City of Newburgh has duly advertised for bids for the Waste Water Treatment Plant back-up generator; and

WHEREAS, bids have been duly received and opened and Peak Power Systems, Inc., is the low bidder; and

WHEREAS, funding for such project shall be derived from HG1.8130.0200.8100;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the bid for the Waste Water Treatment Plant back-up generator be and it hereby is awarded to Peak Power Systems, Inc., for the base bid amount of \$131,599.00, and that the City Manager be and he is hereby authorized to enter into a contract for such work in this amount.

RESOLUTION NO.: 135 - 2012

OF

AUGUST 13, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
A CONTRACT WITH TAM ENTERPRISES, INC.
AND AMENDING RESOLUTION NO: 238-2011, THE 2012 BUDGET
FOR THE CITY OF NEWBURGH, NEW YORK
FOR THE SOUTH INTERCEPTOR SEWER MAIN REPAIR**

WHEREAS, the South Interceptor Trunk Sewer conveys sewer flows from the City of Newburgh's Combined Sewer System to the City's Waste Water Treatment Facility; and

WHEREAS, the sewer flows transmitted via this pipe constitute approximately sixty (60%) percent of the City's daily sewer flows; and

WHEREAS, approximately 120 linear feet of 52" brick sewer main completely collapsed allowing the discharge of raw sewage to the adjacent Quassaick Creek; and

WHEREAS, the discharge of raw sewage waste is a threat to the health and safety of the City's residents as well as an environmental threat to the Hudson River;

WHEREAS, these discharges could subject the City to violations of its New York State SPDES Permit which regulates the treatment and discharge of the City's sanitary and storm waste; and

WHEREAS, City Charter Section C5.12, entitled "Public emergencies," provides in sum that "In case of public emergency such as conflagration, riot, storm,...the City Manager shall also have the power to summon, deputize and otherwise employ such other persons as he may deem necessary for the purpose of rendering protection to the citizens and the City of Newburgh..."; and

WHEREAS, TAM Enterprises, Inc. has preformed the necessary work to repair the South Interceptor Sewer Main;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh hereby declares that the raw sewage discharge creates an emergency condition under Section 103(4) of the New York State General Municipal Law; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to execute a contract with a TAM Enterprises, Inc. for the South Interceptor Sewer Repair in an amount not to exceed \$850,000.00 which currently threatens the health and safety of the City's residents; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that Resolution No: 238-2011, the 2012 Budget of the City of Newburgh, is hereby amended as follows:

| | <u>Decrease</u> | <u>Increase</u> |
|--------------------------|-----------------|-----------------|
| Sewer Fund | | |
| Fund Balance | | |
| G.0000.0911 | \$850,000.00 | |
| Sewer Fund | | |
| Equipment/Infrastructure | | |
| G.8120.0200 | | \$850,000.00 |

RESOLUTION NO.: 136 - 2012

OF

AUGUST 13, 2012

5- C

**A RESOLUTION SUPPORTING THE PURSUIT OF INTERMUNICIPAL AGREEMENTS
FOR THE DESIGN AND CONSTRUCTION OF INFRASTRUCTURE**

WHEREAS, by Resolution No. 263-2010 of November 22, 2012, the City Council of the City of Newburgh authorized participation in a joint grant application with the Orange County Water Authority and the Towns Newburgh and New Windsor seeking funding for a regional water project and declared its intention to enter into inter-municipal agreements in connection with the project;

WHEREAS, Article 5-G of the General Municipal Law authorizes municipal corporations to enter into agreements for the performance among themselves on a cooperative or contract basis for the provision of joint services, including, but not limited to, joint water projects and any other municipal service, activity, project or undertaking; and

WHEREAS, the New York City Department of Environmental Protection (NYCDEP), the County of Orange, the Orange County Water Authority (OCWA), the City of Newburgh, the Town of Newburgh, and, the Town of New Windsor, (the "Municipalities") have an interest in water interconnections; and

WHEREAS, the municipalities recognize and appreciate the need to develop a safe, reliable and adequate water supply to serve the inhabitants of the Northeast Orange County region now and for the foreseeable future; and

WHEREAS, the Municipalities through their technical meetings have identified the priority water interconnection projects as:

1. Installation of approximately 7500 linear feet of water main from the City of Newburgh's Water Treatment Plant (WTP) to the Town of Newburgh's distribution system;
2. Installation of approximately 5600 linear feet of water main from the City of Newburgh's WTP to the Town of New Windsor's distribution system;

3. The construction of a pump station or stations necessary to supply said interconnections;
4. An evaluation of the City of Newburgh's water treatment plant's associated operating costs that will result from the implementation of the priority interconnection projects; and

WHEREAS, the OCWA has secured a grant from the State of New York to implement the priority projects; and

WHEREAS, the County of Orange is negotiating with the NYCDEP to enter into an Intergovernmental Agreement to provide the funds to design and build the priority projects;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh hereby:

1. Supports the implementation of the grant procured by the OCWA and authorizes the City Manager to identify a representative who will attend project working group meetings, as well as share data, documents, and drawings with the consultants implementing the grant, and

2. Will work with the other Municipalities to enter inter-municipal agreements detailing the price, terms and conditions of water sharing by December 31, 2012, and
3. Supports the efforts of the County of Orange in advancing the design of the priority interconnection projects and securing funds from the NYCDEP to design and build the priority projects.

RESOLUTION NO.: 137 - 2011

OF

AUGUST 13, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT \$100,000.00 FROM THE NEWBURGH ENLARGED CITY SCHOOL DISTRICT TO FUND THE SALARY AND BENEFITS OF ONE POLICE OFFICER TO BE HIRED TO BACKFILL POLICE DEPARTMENT PERSONNEL CURRENTLY SERVING IN THE CITY'S SECONDARY SCHOOL AS A COMMUNITY RESOURCE OFFICER

WHEREAS, the City of Newburgh and the Board of Education of the Newburgh Enlarged City School District ("NECSD") have agreed to establish the position of Community Resource Officer ("CRO") to be filled by a police officer from the City of Newburgh Police Department at Newburgh Free Academy; and

WHEREAS, the NECSD has offered to reimburse the City for this CRO at the rate of \$100,000.00 so as to continue to have the CRO stationed at Newburgh Free Academy within the City of Newburgh; and

WHEREAS, this Council has determined that accepting such funds 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 accept funds from the NECSD in the amount of \$100,000.00 Dollars for the assignment of a City of Newburgh Police Officer as CRO in the NECSD.

COMMUNITY RESOURCE OFFICER AGREEMENT

AGREEMENT MADE THIS _____ DAY OF _____, 2012 by and between the Board of Education of the Newburgh Enlarged City School District, having its principal place of business at 124 Grand Street, Newburgh, New York 12550 (hereinafter "the Board of Education") and The City of Newburgh having its principal place of business at City Hall, 83 Broadway, Newburgh, NY 12550 (hereinafter referred to as "the City").

WHEREAS, the City and the Board of Education agree to establish the position of Community Resource Officer (hereinafter "CRO"), to be filled by a police officer from the City of Newburgh Police Department, at the Newburgh Free Academy; and

WHEREAS, the School Board has agreed that they will reimburse the City for its expense in participating in the CRO Program in the amount of One Hundred Thousand (\$100,000.00) Dollars for the period of September 1, 2012 through August 31, 2013 school year and, the City of Newburgh Police Department will assign one officer, at the school specified above, each day that school is open for the hours of 7:30 a.m. - 3:30 p.m. during the school year and during the summer months on such days and times that summer school or the extended year program is being held in the buildings, on the terms and conditions set forth herein;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The School Board and the City of Newburgh by and through the City of Newburgh Police Department have established the following goals and objectives with regard to the CRO Program in the Schools: (a) to maintain a safe campus environment that will be conducive to learning, (b) to create a relationship based upon cooperation and mutual support between law enforcement and school officials; (c) to improve relationships between law enforcement, school, community and the youth of the school; (d) for Police Department officers and command to serve as consultants to school staff, parents, and youth on safety matters and any other matters which will provide a better environment for the students and the teachers in which to pursue their respective tasks; (e) for police officers to serve as role models to students; (f) to provide a continuum of youth services between the school and the community with the support of the Police Department and other City staff and agencies.
2. The City agrees that with the City of Newburgh Police Department shall provide one officer as CROs during the term of this agreement. The CROs shall be subject to the administration, supervision and control of the City of Newburgh Police Department at all times as well as the School Board's policies, regulations and procedures when performing functions at the District's schools; unless otherwise provided in this agreement.

3. The officers assigned as the CROs' will be selected by the Chief of Police based upon the Police Chief's judgment and discretion, taking into consideration among other criteria the officer's training, qualifications, experience, interest in the position and the officer's ability to effectuate the goals and objectives set forth in paragraph 1.
4. The Board of Education shall have the right to request the removal of any CRO and have an officer substituted in his or her place by communicating such request to the Chief of Police at any time during the school year, which request will not be unreasonably denied.
5. The City of Newburgh agrees to provide and pay the CROs' salaries and employment benefits in accordance with the current Newburgh PBA contract.
6. It is understood and agreed that the City of Newburgh Police Department, in its sole discretion, shall have the authority to discharge and discipline an officer assigned as a CRO as provided under the terms of any agreement between the City of Newburgh and the applicable collective bargaining unit, and/or by law. The City shall indemnify and hold harmless the Newburgh Enlarged City School District from any claims, suits, or causes of action arising out of allegations of unfair or unlawful employment practice brought by an officer assigned as a CRO.
7. The following named police officer shall be initially assigned by the Chief of Police of the City of Newburgh Police Department to act as CRO's as follows:

Newburgh Free Academy - Officer Thomas Gleeson

It is understood that such assignments may be changed by the Chief of Police or other commanding officers as in their judgment circumstances may require.

8. It is understood and agreed that the Board of Education shall not be responsible for any overtime pay earned by an Officer serving as a CRO in connection with his or her duties as a CRO and that the cost of same shall be borne solely by the City of Newburgh. The entire extent of the obligation of the School District to compensate the City for CRO services as provided herein shall be as provided hereinabove.
9. It is understood and agreed that, should a CRO be unable to perform his or her duties as a result of illness or injury or other reason causing the CRO to be absent from work, the City of Newburgh Police Department shall assign another officer to fill the CRO position at the affected building on each such day.
10. It is understood and agreed that the CROs to be appointed by the City of Newburgh Police Department shall have the following qualifications:

- (a) The CRO shall be a full time police officer with a minimum of two (2) years of law enforcement experience;
- (b) The CRO shall possess sufficient knowledge of applicable Federal, State and County laws and Town ordinances as well as the School Board's policies and regulations;
- (c) The CRO shall be capable of conducting in depth criminal investigations;
- (d) The CRO shall possess an even temperament and set a good example for students;
- (e) The CRO shall possess good communication skills, which would enable the CRO to function effectively within the school environment.

11. The following are the duties of the CRO:

- (a) Consult with and coordinate activities as requested by a school principal;
- (b) Abide by School Board policies to the extent that such compliance does not interfere with or impede the CRO in the performance of his or her duties as a law enforcement officer;
- (c) The CRO shall develop an expertise in presenting various subjects; including in meeting Federal and State mandates in drug abuse prevention education and shall provide these presentations at the request of school personnel in accordance with the established curriculum;
- (d) Encourage group discussions about law enforcement with students, faculty and parents;
- (e) Under no circumstances shall a CRO be a school disciplinarian. The CRO will not be involved in the enforcement of disciplinary infractions that do not constitute violations of law;
- (f) Attend meetings with parents and faculty groups to solicit their support and understanding of the CRO school program and to promote awareness of law enforcement functions;
- (g) Where possible, serve as a member of the school student services committee, familiarizing students with all community agencies which offer assistance to youths and their families such as mental health clinics, drug treatment centers, etc. Where necessary, the CRO may make recommendations for referrals;

- (h) To confer with the principal of the school to which the CRO is assigned to develop plans and strategies to prevent and/or minimize dangerous situations on or near campus or involving students at school related activities;
- (i) Perform such duties as determined and requested by a given school principal. However, such duties shall not include things normally assigned to school personnel such as lunchroom or hall duty. Nothing herein shall preclude the CRO from being available in areas where interaction with students is expected;
- (j) The CRO shall familiarize himself/herself with and shall abide by School Board policy and applicable law concerning interviews with students should it become necessary to conduct formal law enforcement interviews with students or staff on school property or at school functions under the jurisdiction of the School Board insofar as same shall be in harmony with standard police practices and standing general orders;
- (k) Initiate law enforcement action as necessary and notify the school principal as soon as possible, and, whenever practicable advise the principal before requesting additional law enforcement assistance on campus and undertake all additional law enforcement responsibilities as required by standard police practices and standing general orders;
- (l) The CRO shall act as a liaison for other law enforcement officers in matters regarding School Board policies while on school grounds;
- (m) The CRO shall affirm the role of law enforcement officer by wearing the City of Newburgh Police uniform, unless doing so would be inappropriate for scheduled school activities. The uniform shall be worn at events where it will enhance the image of the CRO and his/her ability to perform his/her duties;
- (n) The CRO shall patrol and maintain a safe corridor within the ½ mile radius directly surrounding the school to which he or she is assigned, including, but not limited to, other school buildings within that radius. The CRO shall be dispatched, as available, to calls for service emanating from within such a radius related to juvenile criminal activity.

12. It is understood and agreed that while the CRO will be stationed at one of the schools within the School Board's jurisdiction, the CRO shall remain an employee of the City of Newburgh Police Department, adhering to all policies and procedures of the Police Department.

13. The CRO shall report to the Main Office at the start of each work day and shall sign in on a log provided by the school. The CRO shall sign out at the end of each work day using the same log.
14. It is understood and agreed that the CRO in pursuing the performance of his/her duties shall coordinate and communicate with the school principal or the principal's designee.
15. The City of Newburgh Police Department shall provide the appropriate in-service training for the CRO, to enable the CRO to function efficiently. The School Board may also provide training in school policies, regulations and procedures, or additional training in other matters relating to students and their safety.
16. The City of Newburgh Police Department shall provide a standard marked patrol vehicle for the CRO, which vehicle shall be maintained by the City of Newburgh Police Department, providing among other things, fuel, tires, etc. and all expenses associated with the operation of the vehicle including insurance. The Police Department will also provide the CRO with a service weapon and ammunition and the usual and customary office supplies and forms required in the performance of the CRO's duties as a police officer. The CRO is authorized to carry a service weapon on school grounds.
17. Should the CRO program continue into future school years, it is understood and agreed that the School District shall evaluate annually the CRO Program and the performance of the CRO on forms to be developed jointly by the parties to this Agreement. Such evaluation by the School Board and the City of Newburgh Police Department shall be performed in order to evaluate the performance of the CRO in accordance with the Department rules and regulations and also to ascertain what may be done to improve the CRO Program.
18. The City agrees to maintain at all times during the term of this Agreement a general comprehensive liability insurance policy for a minimum of a \$1,000,000 and agrees to indemnify and hold harmless the School Board and the Newburgh City School District, its agents and employees from and against any and all claims, suits or causes of actions arising from the City of Newburgh and City of Newburgh Police Department from any injuries or losses occasioned to the CRO by the negligence of the City.
19. The School Board agrees to compensate the City for services rendered in connection with the CRO Program, in the amount of \$100,000.00. Such compensation shall be paid by the School Board to the City of Newburgh monthly.
20. The terms of this agreement are for the period commencing with the provision of such services and ending on the 31st day of August, 2013.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above-written:

BOARD OF EDUCATION OF THE NEWBURGH
ENLARGED CITY SCHOOL DISTRICT

DAWN M. FUCHECK
BOARD OF EDUCATION PRESIDENT

THE CITY OF NEWBURGH

RICHARD F. HERBEK
CITY MANAGER
CITY OF NEWBURGH

APPROVED AS TO FORM:

MICHELLE KELSON
Corporation Counsel

CHERYL GROSS
City Comptroller

RESOLUTION NO.: 138 - 2012

OF

AUGUST 13, 2012

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN
THE CITY OF NEWBURGH AND WRIGHT RISK MANAGEMENT COMPANY LLC
TO PERFORM WORKERS' COMPENSATION CLAIMS RUNOFF SERVICES**

WHEREAS, the City of Newburgh wishes to enter into the annexed agreement with Wright Risk Management Company LLC; and

WHEREAS, the agreement is for providing for the Plan Manager, Wright Risk Management, to provide workers' compensation claims runoff management services for the period of January 1, 2012 to December 31, 2012; and

WHEREAS, Wright Risk Management will perform workers' compensation claims runoff services for City claims that arose prior to March 1, 2008, when the City joined the New York State Municipal Workers' Compensation Alliance; and

WHEREAS, the rate for these services is \$500.00 per Claim per year or portion thereof; and

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

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the agreement with Wright Risk Management Company LLC, in substantially the same form as annexed hereto with any other provision that Counsel may require, for providing workers' compensation claims runoff management services.

CLAIMS RUNOFF MANAGEMENT AGREEMENT (this "Runoff Agreement") dated January 1, 2012 ("Effective Date") between the City of Newburgh, a municipality with its primary address at City Hall, 83 Broadway, Newburgh, NY 12550 ("Member"), and Wright Risk Management Company, LLC, a Delaware limited liability company with its principal place of business at 333 Earle Ovington Boulevard, Suite 505, Uniondale, NY 11553-3624 ("Plan Manager").

RECITALS

WHEREAS, on March 1, 2008 ("Membership Date"), Member became a member of the New York State Municipal Workers' Compensation Alliance (the "Plan"), a cooperative workers' compensation plan for member municipalities (the "Members"), with a principal location at c/o Association of Towns of the State of New York, 146 State Street, Albany, NY 12207; and

WHEREAS, the Plan has retained the program management and other professional services of the Plan Manager pursuant to a management agreement ("Management Agreement"); and

WHEREAS, the Member has incurred certain workers' compensation and employer's liability claims prior to the Membership Date ("the Claims"), and desires that the Plan Manager manage the Claims.

NOW, THEREFORE, the Member hereby engages the services of the Plan Manager, and in consideration of the mutual promises herein contained, the parties agree as follows:

I. TERM.

This Runoff Agreement shall be effective commencing on the Effective Date set forth above, and shall continue in effect until the earlier of:

- A. December 31, 2012;
- B. the date the Member withdraws or is terminated as a member of the Plan; or
- C. the date this Runoff Agreement is terminated pursuant to Section VI.

II. CLAIM MANAGEMENT SERVICES.

A. During the term of this Runoff Agreement, the Plan Manager will provide claims management services for the Claims, contingent upon the Member remaining a member of the Plan. Notwithstanding, the services provided and the Claims managed under this Runoff Agreement are separate from the services provided and the claims managed by the Plan Manager for the Plan under the Management Agreement. Except for the Member, the Plan and its Members shall have no liability arising from this Runoff Agreement or any of the Claims. The Member shall pay all amounts, fees, and expenses relating to the Claims, using funds established by the Member to finance its workers' compensation obligations (the "Self-Insured Fund").

B. In cooperation with Member, the Plan Manager will design and implement the internal claims reporting system for Member to report Claims that have not yet been reported. The Plan Manager will cooperate with the Member to accomplish the transfer of the Claims that have already been reported; provided that, the Plan Manager shall have no responsibility for managing the Claims until all information relating to the Claims has been received by the Plan Manager. This paragraph shall only apply in the first year that the Plan Manager is handling the Claims.

C. Once a Claim is reported or transferred to the Plan Manager, the Plan Manager will review the Claim to determine if investigation is needed to determine the compensability and extent of the injury claimed. If investigation is necessary, the Plan Manager will perform such investigation immediately and thoroughly. If any third party investigation services are necessary, such as surveillance, review of accident locations, or taking signed statements, the Plan Manager will arrange for such services, and the fees and expenses for such services shall be allocated loss adjustment expense that will be charged against the Self-Insured Fund.

D. If it is determined that a Claim is compensable, the Plan Manager will file all forms required by the Workers' Compensation Board ("WCB") and direct the Member to make payments in accordance with statutory requirements and mandated fee schedules. The Member is responsible for providing any information necessary to complete all forms.

E. If it is determined that a Claim is not compensable, or if the injury is not of the nature or extent claimed by the employee, the Claim will be controverted and the file prepared for argument before WCB. The Plan Manager will provide for appearance by an experienced workers' compensation attorney on all cases in which hearings are held before WCB. Attorney fees, the cost of appeals, and other litigation expenses, if any, shall be allocated loss adjustment expenses that will be charged against the Self-Insured Fund.

F. The Plan Manager shall pursue subrogation whenever it is reasonably anticipated that the Member may be reimbursed for payments made. The costs of retaining third party services to assist in pursuing subrogation, where necessary and appropriate, shall be allocated loss adjustment expenses that will be charged against the Self-Insured Fund.

G. The Plan Manager will provide supervisory services for the Claims during the term of this Runoff Agreement. These supervisory services will include claims adjustment services, general monitoring of medical treatment in order to ensure appropriate treatment and minimize medical costs, and coordinating audit of all medical bills received for legitimate workers' compensation claims to confirm causal relationship and that the amount approved for payment conforms to the prescribed New York State Workers' Compensation Fee Schedules. These supervisory services will not include telephonic or field case management, or other managed care services, which will be arranged and coordinated, as necessary, by the Plan Manager. The costs of telephonic or field case management, or other managed care services shall be allocated loss adjustment expenses that will be charged against the Self-Insured Fund.

H. As appropriate, the Plan Manager will obtain independent medical opinions, using a WCB-registered referral service, to advise the Member as to the appropriateness of medical treatment being received by, and the degree of disability of, the injured employee. The Plan Manager will consult with treating physicians, medical consultants, and other medical professionals to assist in instituting rehabilitative efforts to achieve an injured employee's return to work at the earliest possible time. The referral service and medical consultants' fees shall be allocated loss adjustment expenses that will be charged against the Self-Insured Fund.

I. The Plan Manager will implement a payment procedure for lost time benefits, medical bills, and expense payments. This procedure will be developed with Member personnel to ensure timely and appropriate payment. The Plan Manager will prepare payment documentation, including payment authorizations and copies of bills, and forward such documentation to the Member. The Member shall be responsible for printing, signing, and distributing checks in compliance with the Plan Manager's instructions.

J. The Plan Manager will review any reported employers' liability Claims that arise, and advise regarding coverage, defense, and indemnification of such Claims. As necessary, the Plan Manager will arrange for the retention of counsel to represent the Member on employers' liability Claims. Attorney fees, the cost of appeals, and other litigation expenses, if any, shall be allocated loss adjustment expenses that will be charged against the Self-Insured Fund.

K. The Plan Manager will track medical services subject to the Department of Health ("DOH") surcharges mandated by Public Health Law Section 2807, direct payment of applicable surcharges, and file all necessary forms with DOH on a monthly or as needed basis. In the first year of handling the Claims, the Plan Manager shall have no responsibility under this Section unless Member provides medical reports, hospital bills, access to the DOH website, and other information relating to the Claims necessary to perform the Plan Manager's services under this Section.

L. In April of each year, the Plan Manager will review, complete, and return the Assessment Base Factor report required by WCB to determine the amount of assessments levied against self-insured employers in New York. In order to complete this report, the Plan Manager will verify the indemnity payments made from April 1 of the prior year to March 31 of the current year, consistent with WCB's fiscal year. The Plan Manager will also review all lost time Claims to determine if a Section 15-8 claim has or should be established, and will also ensure that any appropriate amounts are deducted from the report. In the first year of handling the Claims, the Plan Manager shall have no responsibility under this Section unless Member provides a two-year check registry (including payment amounts, payees, and dates of service) and other information relating to the Claims necessary to perform the Plan Manager's services under this Section.

M. The Plan Manager will review all Assessment Billing Notices for accuracy. If the Member becomes overpaid for a WCB fiscal year due to variations in lost time experience from year to year, the Plan Manager will verify that all future credits issued to the Member by WCB are properly issued and applied. In the first year of handling the Claims, the Plan Manager shall have no responsibility under this Section unless Member provides a two-year check registry (including payment amounts, payees, and dates of service) and other information relating to the Claims necessary to perform the Plan Manager's services under this Section.

N. The Plan Manager will provide cumulative quarterly loss runs encompassing all Claims. These loss runs will include the following information:

1. File number.
2. Date of Accident.
3. Name of injured employee/claimant.
4. Occupation.
5. Description of accident.
6. Type of injury/part of body.
7. Status of claim/class.
8. Incurred: medical/indemnity benefits.
9. Amount paid to date: medical/indemnity and expense payments.

O. The Plan Manager will ensure that the Member's open files are properly maintained and available for review and/or audit and will arrange for the storage of the Member's closed/inactive files. The Plan Manager may maintain and store files electronically in lieu of a physical file. Physical storage costs, if any, are an expense that will be charged against the Self-Insured Fund. The foregoing is subject to Section VII of this Agreement.

III. FEE.

The Plan Manager will invoice the Member for services under this Runoff Agreement at the rate set forth in the Addendum to this Agreement. The Member shall pay such management fee within thirty (30) days of receipt of the invoice.

IV. SERVICE COMMITMENT.

The Plan Manager shall devote such time to the performance of its duties under this Runoff Agreement as is reasonably necessary for the satisfactory performance of its duties under this Runoff Agreement.

V. INDEMNIFICATION.

A. The Plan Manager shall hold harmless and indemnify the Member against any loss, liability, damage, or expense, including reasonable attorneys' fees, caused by the willful misconduct, gross negligence, or negligence on the part of the Plan Manager or any of its employees or agents, which result from, or arise out of, a breach of any obligation in this Runoff Agreement. Notwithstanding the foregoing, the Member, not the Plan Manager, shall be liable for payment of compensable Claims.

B. The Member shall hold harmless and indemnify the Plan Manager against any loss, liability, damage, or expense, including reasonable attorneys' fees, caused by the willful misconduct, gross negligence, or negligence on the part of the Member or any of its employees or agents, which result from, or arise out of, a breach of any obligation in this Runoff Agreement.

VI. TERMINATION.

A. Either party may terminate this Runoff Agreement for the following reasons upon sixty (60) days written notice to the other party:

1. Fraud or criminal acts on the part of the other party or pattern of conduct of such other party which constitutes willful misconduct or gross negligence with respect to the performance of such other party's duties hereunder;
2. Substantial and continuing breach of this Runoff Agreement by the other party, provided, however, that the party seeking to terminate shall notify the other party of such breach, identifying such breach in full particulars, and the other party shall have thirty (30) days from receipt of such notice to cure the breach and, if such breach be cured within such period, such breach shall not be cause for termination; or
3. The Superintendent of Insurance shall issue a final order to terminate this Runoff Agreement, and the time for appealing such order shall have expired.

B. This Runoff Agreement shall terminate immediately without notice upon:

1. commencement by either party of any case, proceeding or other action: (a) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment,

winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its assets, or either party shall make a general assignment for the benefit of its creditors;

2. commencement against either party of any case, proceeding or other action of a nature referred to in Section VI.B.1 above which: (a) results in the entry of an order for relief or any such adjudication or appointment, or (b) remains undismissed, undischarged or unbonded for a period of sixty (60) days;
3. commencement against either party of any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof;
4. consent, approval, acquiescence, or any action by either party in furtherance of any of the acts set forth in Sections VI.B.1, 2, or 3 above; or
5. an inability by either party to pay its debts as they become due.

VII. **PROPERTY RIGHTS, CONFIDENTIALITY, AND RECORD KEEPING.**

A. **The Member's Property.**

All portions of the claim file, including WCB documents, claim reports, investigation reports, correspondence and claim data of the Member acquired and used by the Plan Manager in the performance of its duties hereunder ("**Member Property**") shall belong to and remain the sole property of the Member. Upon termination of this Runoff Agreement, the Plan Manager shall promptly return the Member Property to the Member or its designee. The Plan Manager will transfer such files in electronic form that can be produced by the Plan Manager's system without special modification and that will be readable by the Member. The Plan Manager shall keep all Member Property confidential, and shall not use, publish, discuss, disclose, or communicate Member Property to third parties, except as necessary to perform its obligations under this Runoff Agreement, and in accordance with this Runoff Agreement. This provision shall survive termination of this Runoff Agreement.

B. **The Plan Manager's Property.**

All Systems created by the Plan Manager in the performance of its duties and activities under this Runoff Agreement shall belong to and remain the property of the Plan Manager. "**Systems**" as used herein shall include data processing, databases, computer programs, computer equipment, formats, management protocols, operation documentation, and internal reports of the Plan Manager pertaining to the Member or the Claims. This includes Systems for the administration, accounting, underwriting, risk management, cost containment and safety programs and services, and management systems developed by the Plan Manager in connection with the performance of its services hereunder. This provision shall survive termination of this Runoff Agreement.

VIII. MISCELLANEOUS.

A. Independent Contractor.

The Plan Manager shall be an independent contractor and not an employee, agent, or servant of the Member. The Plan Manager's employees shall be considered the Plan Manager's employees for all purposes and Plan Manager alone shall be responsible for their work, personal conduct, direction, and compensation. The Member shall not be responsible for withholding taxes with respect to the Plan Manager's compensation and the Plan Manager shall be solely responsible to pay all applicable taxes from such compensation, including any compensation owed to its employees.

B. Entire Agreement.

This Runoff Agreement supersedes any and all other agreements either oral or in writing between the parties hereto relating to the Claims.

C. Assignment.

Neither this Runoff Agreement nor any duties or obligation hereunder shall be assignable by the Plan Manager without the prior written consent of the Member. In the event of an assignment by the Plan Manager to which the Member has consented, the assignee or his legal representative shall agree in writing with the Member to personally assume, perform, and be bound by the covenants, obligations and agreements contained herein.

D. Governing Law.

The laws of the State of New York shall govern the validity of this Runoff Agreement, any of its terms or provisions, and the rights and duties of the parties hereunder.

E. Amendment.

This Runoff Agreement may be amended by the mutual written agreement of the parties to be attached to and incorporated into this Runoff Agreement.

F. Legal Construction.

This Runoff Agreement was negotiated by sophisticated parties at arm's length and shall be construed as if drafted jointly by the parties. No presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of its provisions. Any waiver of any other term, condition, or provision of this Agreement will not constitute a waiver of any other term, condition, or provision, nor will a waiver of any breach of a term, condition, or provision constitute a waiver of any subsequent or succeeding breach.

G. Effect of Invalidity.

In case any one or more of the provisions contained in this Runoff Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provision thereof and this Runoff Agreement shall be construed as if such invalid, illegal, or unenforceable provision has never been contained herein.

H. Notices.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given, if mailed by certified or registered mail, or by nationally recognized overnight carrier, return receipt requested, to the respective party at the addresses set forth below, on the date received or rejected:

If to the Member:

City of Newburgh
City Hall
83 Broadway
Newburgh, NY 12550
Attention: Comptroller

If to the Plan Manager:

Wright Risk Management Company, LLC
333 Earle Ovington Boulevard, Suite 505
Uniondale, NY 11553-3624
Attention: Office of General Counsel

or to such other person and address as either party may designate by notice to the other.

1. **Headings.**

The headings to the various sections of this Runoff Agreement have been inserted for convenience of reference only and shall not modify, define, limit, or expand the expressed provisions of this Runoff Agreement.

J. **Counterparts; Facsimiles.**

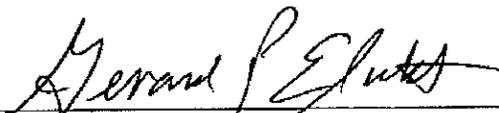
This Runoff Agreement may be executed: (1) in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same Runoff Agreement; and (2) by facsimile which shall be considered and constitute an original executed and delivered agreement.

IN WITNESS WHEREOF, the parties have caused this Runoff Agreement to be executed by their duly authorized representatives as of the Effective Date.

CITY OF NEWBURGH

By: _____
Name:
Title:

WRIGHT RISK MANAGEMENT COMPANY, LLC

By: 
Name: Gerard P. Elicks
Title: President

ADDENDUM TO CLAIMS RUNOFF MANAGEMENT AGREEMENT (this "Addendum"), dated January 1, 2012 ("Effective Date"), between the City of Newburgh (the "Member") and Wright Risk Management Company, LLC (the "Plan Manager").

RECITALS

WHEREAS, the Member and the Plan Manager desire to enter into a claims runoff management agreement ("Runoff Agreement"), dated January 1, 2012, for the Plan Manager to provide workers' compensation claims runoff management services on the terms and conditions provided in that Agreement, as modified by this Addendum;

NOW, THEREFORE, the parties hereby agree to add and/or amend the following provisions of the Runoff Agreement, as if incorporated therein:

1. The Plan Manager will invoice the Member for services under the Runoff Agreement at the rate of \$500 per Claim per year or portion thereof. The Member shall pay such management fee within thirty (30) days of receipt of an invoice.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CITY OF NEWBURGH

By: _____

Name:

Title:

WRIGHT RISK MANAGEMENT COMPANY, LLC

By: 

Name: Gerard P. Elicks

Title: President

RESOLUTION NO.: 139 - 2012

OF

AUGUST 13, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AGREEMENTS WITH VARIOUS PARTIES
TO PROVIDE PERFORMING ARTISTS AND RELATED SERVICES
IN CONNECTION WITH THE CITY OF NEWBURGH
24th ANNUAL INTERNATIONAL FESTIVAL

WHEREAS, the City of Newburgh will hold its annual International Festival from Friday, August 31, 2012 through Monday, September 3, 2012, dates inclusive; and

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

WHEREAS, there is \$10,000.00 available in the 2012 Festival Budget; and

WHEREAS, there is additional funding from proceeds from previous festivals available in a Trust and Agency Account; and

WHEREAS, such agreements shall not exceed the 2012 Festival Budget and the funds in the Trust and Agency Account;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into the referenced agreements in a form subject to approval of the Corporation Counsel with such other terms and conditions as Corporation Counsel may require, with the performing artists and providers of related necessary services in connection with the 24th Annual International Festival, with the net cost to the City of such agreements not to exceed the 2012 Festival Budget and the Trust and Agency Account proceeds.

RESOLUTION NO.: 140 - 2012

OF

AUGUST 13, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO APPLY FOR AND TO ACCEPT IF AWARDED A GRANT IN AN AMOUNT
NOT TO EXCEED ONE MILLION SIX HUNDRED THOUSAND DOLLARS
FROM THE DEPARTMENT OF HOMELAND SECURITY UNDER THE
STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE PROGRAM
("SAFER") TO PROVIDE FUNDING TO HIRE FIFTEEN (15) FIREFIGHTERS
IN THE CITY OF NEWBURGH FIRE DEPARTMENT
WITH NO CITY MATCH REQUIRED

WHEREAS, the City of Newburgh Fire Department has expressed an interest in applying for funds available from the Department of Homeland Security under the Staffing for Adequate Fire and Emergency Response ("SAFER") Program; and

WHEREAS, the Fire Department has proposed an application for said grant in an amount not to exceed One Million Six Hundred Thousand (\$1,600,000.00) Dollars; and

WHEREAS, said grant does not require any funding match by the City of Newburgh; and

WHEREAS, said grant, if awarded, will support the well-being and safety of our community and enhance community protection from fire; and

WHEREAS, if awarded, such funding will be used to hire fifteen (15) firefighters within the City of Newburgh Fire Department for two years; and

WHEREAS, it is deemed to be in the best interests of the City of Newburgh and its citizens to apply for and accept such grant if awarded;

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 such documents and to take any necessary and appropriate actions to apply for and to accept if awarded a grant in an amount not to exceed One Million Six Hundred Thousand (\$1,600,000.00) Dollars from the Department of Homeland Security under the Staffing for Adequate Fire and Emergency Response ("SAFER") Program to provide funding to hire fifteen (15) firefighters in the City of Newburgh Fire Department with no City match required.

AGREEMENT

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

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

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

ARTICLE 1: Term.

This Agreement shall run from September 1, 2012 to August 31, 2014.

ARTICLE 2: Obligation of the City.

A. The City shall grant to the Licensee a revocable license to use the athletic fields, basketball courts and Activity Center located in the Delano-Hitch Recreation Park in the City of Newburgh for organization and administration of sports and recreational activities for the period of time set forth above pursuant to a written schedule to be submitted to and approved in writing by the City Manager or his designee and in accordance with all applicable rules and regulations for the use of the facilities.

B. The City shall provide field lighting and maintenance for players/participants for the organized activities in a location in the Delano-Hitch Recreation Park to be determined by the City. The City has sole authority to cancel or delay outdoor sports and/or other recreational activities due to inclement weather. The City will make reasonable attempt to notify Licensee of cancellation of such outdoor games, events or activities due to inclement weather within two (2) hours before game, activity or event is scheduled to begin.

C. The City shall have no obligation to provide personnel, uniforms, sports equipment or other supplies necessary for the sports, games and/or recreational activities organized by Licensee.

ARTICLE 3: Obligation of Licensee.

A. The Licensee shall organize and administer sports leagues, athletic games and other recreational activities at the licensed facilities. During the term of this Agreement, the Licensee shall provide the City Manager or his designee a written schedule of all sports, games, activities and other uses of the facility for each month at least 30 days in advance and failure to do so may result in City canceling any or all such sports, game(s), activities or uses. The Licensee shall provide the City with 48 hours notice to hold a rescheduled game or activity. All games and activities must

start on time except for weather delay as determined by the City. No game or activity may be scheduled to start before 8:00 a.m. or after 8:00 p.m.

B. The Licensee shall provide for all personnel, supplies and equipment necessary and proper for the sports leagues, athletic games or recreational activities as is required by their use of the licensed facilities.

C. The Licensee shall have a representative with authority over all activities present at all sports leagues, athletic games or other recreational activities at all times. The Licensee shall provide for the registration of participants and the collection of fees for all sports leagues, athletic games or other recreational activities conducted during the period of this agreement. Noise levels shall be kept at appropriate decibel levels so as not to disturb neighbors.

D. The Licensee shall, after each day of play, return the licensed facilities to the City on that same day to a clean condition free of all equipment, garbage and debris. All garbage generated shall be deposited in proper trash receptacle. The Licensee shall repair all damage incurred to the facilities during the exercise of the license at its own sole expense. Such repairs shall be performed immediately. Licensee agrees that if such damages are not promptly and completely repaired, Licensee shall remain liable for all consequences, direct and indirect, consequential and incidental, to the City resulting from the damages and from the unavailability of such facilities resulting therefrom.

E. The Licensee shall provide all necessary security and supervision of minors participating in sports leagues, athletic games, recreational activities or present as spectators during the period of this agreement. The Licensee shall be liable for any damage done to the premises by its officers, agents, servant, employees or invitees during the period of this Agreement.

F. Licensee agrees to meet with the City Manager or his designee upon the request of the City Manager during the term of this Agreement to review the Licensee's activities pursuant to its obligations under this Agreement.

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

ARTICLE 4: Payment.

A. The Licensee shall pay to the City, as and for a fee for the use of the facilities during the period of this agreement, FIFTY (50%) PERCENT of the gross fees collected by Licensee in organizing, scheduling and administering the sports leagues, athletic games and other recreational activities. Payment shall be remitted to the City of Newburgh by the Licensee on the last calendar day of each month.

B. The Licensee shall maintain books and records to account for the collections of fees in connection with the organizing, scheduling and administering of the sports leagues, athletic games and recreational activities and shall make such books and records available for the City's review upon ten (10) days notice to review same.

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

ARTICLE 5: Insurance.

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

B. The Licensee 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 Licensor. Except for Workers' Compensation, the City of Newburgh 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 Licensee and not those of the Licensor. Notwithstanding anything to the contrary in this Agreement, Licensee irrevocably waives all claims against the City of Newburgh for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 5. The provisions of insurance by Licensee shall not in any way limit Licensee'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 Broad form contractual Liability, bodily injury and property damage | \$1,000,000 each occurrence/ |

\$2,000,000 aggregate

Licensee shall attach to this Agreement certificates of insurance evidencing Licensee's compliance with these requirements

C. 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 of Newburgh 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 and the Corporation Counsel and the City shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to Licensee. 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:

1. Policy retroactive dates coincide with or precede Licensee's start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);
2. Licensee will maintain similar insurance for at least three (3) years following termination of this Agreement; and
3. If the insurance is terminated for any reason, Licensee agrees to purchase an unlimited extended reporting provision to report claims arising from the services performed under this Agreement.

ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

- A. That it is financially solvent and that it is experienced and competent to perform the type of work or to furnish the consideration to be furnished by it; and
- B. That it is familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or play or those employed or engaged therein. It is understood and agreed between the parties that the Licensee shall have no right to control the actions of City employees nor any duty to supervise the actions of City employees.

ARTICLE 7: Permits and Regulations.

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

ARTICLE 8: City's Right to Terminate Agreement.

- A. The City shall have the right to stop work or terminate this agreement under the following terms and conditions:
1. The Licensee refuses or fails to perform any of its obligations under this agreement; or
 2. The Licensee fails to make prompt payment or perform work as required by this agreement; or
 3. The Licensee fails or refuses to comply with all applicable laws or ordinances; or
 4. The Licensee is guilty of substantial violation of any provision of this agreement.
- B. In the event the City elects to stop work or terminate this agreement on any ground or grounds set forth in subparagraphs (1) - (4) of paragraph A, the City shall provide the Licensee with written notice, no less than fourteen (14) days prior to such stop work or termination of this agreement, of the City's intent to so stop work or terminate this agreement and the ground or grounds therefore. In the event the Licensee shall cure such ground or grounds prior to the date noticed for stop work or termination of this agreement, the City shall not stop work or terminate the agreement on such grounds.
- C. The City, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days notice to the Licensee, terminate the agreement with the Licensee.

ARTICLE 9: Damages.

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

ARTICLE 10: Indemnity and Save Harmless Agreement.

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

from any liability imposed upon the Licensee, its officers, agents and/or employees arising from the negligence, active or passive, of the City.

ARTICLE 11: No Assignment.

In accordance with the provisions of Section 109 of the General Municipal Law, the Licensee is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement or of its right, title or interest in this agreement or its power to execute this agreement to any other person or corporation without the previous consent in writing of the City.

ARTICLE 12: Required Provisions of Law.

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

ARTICLE 13: Notices.

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

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

TO: _____, Licensee

ARTICLE 14: Waiver.

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

ARTICLE 15: Modification:

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

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

THE CITY OF NEWBURGH

by: _____
RICHARD F. HERBEK
City Manager

by: _____
STERLING PONDER

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

RESOLUTION NO.: 141-2012

6-d

OF

AUGUST 13, 2012

RESOLUTION APPROVING ADDITIONAL BENEFITS PROVIDED FOR
IN SECTION 242 OF THE MILITARY LAW
FOR WATER DEPARTMENT SUPERINTENDENT JEFFREY WYNANS
WHILE SERVING ACTIVE DUTY IN THE MILITARY
EFFECTIVE ON OR ABOUT AUGUST 16, 2012

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that Water Department Superintendent Jeffrey Wynans shall be entitled to receive the following benefits:

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

- d) Employees shall accrue sick leave, personal time and vacation leave at the rate set forth in the Non-Bargaining Unit Benefits Plan during the period they receive benefits pursuant to this Memorandum.
- e) The benefits provided for herein shall be in effect from August 16, 2012 to and including August 16, 2013. The term of this benefit may be extended by resolution in the event that the Employee's active duty status extends beyond August 16, 2013; and

BE IT FURTHER RESOLVED, that the Council of the City of Newburgh hereby extends its esteem, gratitude, appreciation and admiration to Jeffrey Wynans and all others called to active duty on behalf of this Country.

RESOLUTION NO.: 142-2012

OF

AUGUST 13, 2012

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING
WITH THE CITY OF NEWBURGH UNIT, ORANGE COUNTY LOCAL 836, CIVIL
SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFL-CIO
TO PROVIDE FOR ADDITIONAL BENEFITS PROVIDED FOR
IN SECTION 242 OF THE MILITARY LAW
FOR ASSISTANT MAINTENANCE MECHANIC RICHARD SMITH
WHILE SERVING ACTIVE DUTY IN THE MILITARY
EFFECTIVE ON OR ABOUT AUGUST 16, 2012

WHEREAS, the City of Newburgh and the City of Newburgh Unit, Orange County Local 836, Civil Service Employees Association, Inc., Local 1000, (hereinafter "the Union"), are parties to a collective bargaining agreement; and

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

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

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

NOW, THEREFORE, BE IT

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

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

MEMORANDUM OF UNDERSTANDING

BETWEEN
THE CITY OF NEWBURGH UNIT, ORANGE COUNTY LOCAL 836, CIVIL
SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000,
AND
THE CITY OF NEWBURGH

WHEREAS, the CITY OF NEWBURGH (CITY) and THE CITY OF NEWBURGH UNIT, ORANGE COUNTY LOCAL 836, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, are desirous of entering into an agreement between the parties to provide for extended military benefits for members who are military reservists and are federally activated to military duty as of the result of the events of September 11, 2001 and the ongoing conflicts overseas beyond the benefits mandated by New York State Military Law.

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

1. Members of the CSEA ordered to active military duty (including ordered service in the reserve force) as a result of the events of September 11, 2001, and the ongoing conflicts overseas, shall be entitled to receive the following benefits:
 - a) Members who have exhausted their entitlement to paid military leave under Section 242 of the Military Law shall be entitled to an additional thirty (30) calendar days or twenty-two (22) working days of supplemental military leave at full pay, whichever is greater, in any one calendar year, not exceeding in total sixty (60) calendar days for any one continuous period of absence;
 - b) Members who have exhausted their entitlement to the paid leave set forth in paragraph (a) above shall be entitled to military leave at a rate of pay equal to the Member's rate of pay pursuant to the Collective Bargaining Agreement less the compensation received by the Member as a result of his or her active duty. The Member shall provide the city with an "enlisted pay chart" establishing the applicable military rate of pay;
 - c) Members shall receive the same individual or family health insurance benefits provided pursuant to the Collective Bargaining Agreement, as received by such members prior to their date of activation;

- d) Members shall accrue sick leave, personal time and vacation leave at the rate set forth in the Collective Bargaining Agreement during the period they receive benefits pursuant to this Memorandum.

2. The benefits provided in paragraph 1 of this Memorandum shall be in effect from August 16, 2012 to and including August 16, 2013. The terms of this Memorandum may be extended by resolution in the event that the Member's active duty status extends beyond August 16, 2013.

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

Dated: August _____, 2012
Newburgh, New York

AGREED TO:

CITY OF NEWBURGH

By: _____
Richard F. Herbek, City Manager

THE CITY OF NEWBURGH UNIT,
ORANGE COUNTY LOCAL 836,
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000,

By: _____
James Smith, President

RESOLUTION NO.: 143 - 2012

OF

AUGUST 13, 2012

A RESOLUTION MEMORIALIZING THE SUPPORT AND CONTINUATION
OF THE PROPERTY PROPOSAL SUBMITTED BY THE CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY IN CONNECTION WITH THE HUDSON
VALLEY LIGHTING PROJECT

WHEREAS, the City of Newburgh Industrial Development Agency ("IDA") has presented a proposal to this Council for the exchange of real property ultimately to be the site for Hudson Valley Lighting; and

WHEREAS, this Council is in general agreement of such exchange of real property; and

WHEREAS, the IDA will assume all liability and responsibility for necessary and required environmental clean-up of such properties; and

WHEREAS, the IDA agrees to defend, indemnify and hold the City of Newburgh harmless against any claims, actions and proceedings brought against IDA due to the negligence of IDA, in connection with and/or relating to IDA's use of the premises; and

WHEREAS, the IDA shall be responsible for the hiring of a licensed surveyor to prepare meets and bounds descriptions for the proposed properties and to pay for such services; and

NOW, THEREFORE, BE IT RESOLVED, that this Council of the City of Newburgh, New York, hereby memorializes its support of and the continuation of the property proposal submitted by the City of Newburgh Industrial Development Agency in connection with the Hudson Valley Lighting Project; and

BE IT FURTHER RESOLVED, by this Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to negotiate on behalf of the City of Newburgh a land transfer agreement and that such land transfer agreement shall be brought back to this Council for its further consideration.

RESOLUTION NO.: 144 - 2012

OF

AUGUST 13, 2012

A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF
JEAN-CLAUDE FRANCOIS AGAINST THE CITY OF NEWBURGH
IN THE AMOUNT OF THRITY-EIGHT THOUSAND DOLLARS

WHEREAS, Jean-Claude Francois brought an action against the City of Newburgh; and

WHEREAS, the plaintiff and the City of Newburgh have reached an agreement for the payment of the settlement in the amount of Thirty-eight Thousand (\$38,000.00) Dollars in exchange for a release to resolve all claims among them; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorneys are hereby authorized to settle the claim of Jean-Claude Francois against the City of Newburgh in the total amount of Thirty-eight Thousand (\$38,000.00) Dollars and that City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

RESOLUTION NO.: 145 -2012

OF

AUGUST 13, 2012

**A RESOLUTION ACCEPTING NINETY THOUSAND DOLLARS FROM
THE GREATER HUDSON VALLEY FAMILY HEALTH CENTER
IN FULL SATISFACTION OF THE AMOUNTS DUE TO
THE CITY OF NEWBURGH AND AUTHORIZING THE CITY MANAGER
TO EXECUTE A SATISFACTION OF JUDGMENT**

WHEREAS, the City of Newburgh and the City of Newburgh Community Development Agency commenced an action on June 8, 2000 to recover money damages in connection with a loan made to Family Health Center of Newburgh, Inc.; and

WHEREAS, the City of Newburgh recovered a total judgment against Family Health Center of Newburgh, Inc. for the sum of \$278,186.51, which was entered in the action on September 18, 2006, in the Supreme Court of the State of New York, County of Orange and docketed on November 2, 2006 in the office of the Clerk of the County of Orange; and

WHEREAS, The Greater Hudson Valley Family Health Center, Inc. (GHVFHC), f/k/a Family Health Center of Newburgh, Inc., has made 6 equal annual payments of \$27,818.65 for a total amount of \$166,911.90 to the City in connection with said judgment; and

WHEREAS, a total of \$111,274.61, in 4 annual installments of \$27,818.65, remains due to the City under said judgment and GHVFHC now proposes to pay to the City \$90,000.00 in a single lump-sum payment to satisfy said judgment in full; and

WHEREAS, the City Council of the City of Newburgh has determined that accepting a lump sum payment in the amount of \$90,000.00 in full satisfaction of the judgment is in the best interest of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to accept \$90,000.00 in a single lump-sum payment from GHVFMC and to execute a satisfaction of judgment releasing the lien held by the City of Newburgh.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

X

The City of Newburgh and,
City of Newburgh Community Development Agency,

Plaintiff,

-against-

Family Health Center of Greater Newburgh, Inc.

Defendants.

SATISFACTION OF
JUDGMENT

Index No. 2000-003429

Assigned Judge:
Lawrence I. Horowitz

X

WHEREAS, a judgment was entered in the above entitled action on September 18, 2006, in the Supreme Court of the State of New York, County of Orange in favor of plaintiffs, The City of Newburgh and City of Newburgh Community Development Agency against Family Health Center of Greater Newburgh, Inc. for the sum of \$278,186.51 which was docketed on November 2, 2006 in the office of the Clerk of the County of Orange; and

WHEREAS, the sum of \$111, 274.61.00 remains unpaid; and

WHEREAS, plaintiffs have accepted the sum of \$90,000.00 in full payment of the remaining balance; and

WHEREAS, the undersigned plaintiff-judgment creditor certifies that there are no outstanding executions with any Sheriff or Marshal within the State of New York;

THEREFORE, full satisfaction of said judgment is hereby acknowledged, and the Clerk is hereby authorized and directed to make an entry of full satisfaction on the docket of said judgment.

Dated: August _____, 2012

City of Newburgh

By: Richard F. Herbek
City Manager

STATE OF NEW YORK)
)SS.:
COUNTY OF ORANGE)

On the _____ day of August, in the year 2012, before me, the undersigned, 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 acted, executed the instrument.

Notary Public

RESOLUTION NO.: 146 - 2012

OF

AUGUST 13, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A LICENSE AGREEMENT WITH
DAILY ORGANIZED MULTI-ACTIVITY EVENTS, LLC TO ALLOW THEM
ACCESS TO ATHLETIC FIELDS, BASKETBALL COURTS AND
ACTIVITY CENTER LOCATED IN DELANO-HITCH RECREATION PARK
FOR THE PURPOSE OF USING SAID PROPERTY
FOR THE ORGANIZATION AND ADMINISTRATION OF SPORTS AND
RECREATIONAL ACTIVITIES**

WHEREAS, Daily Organized Multi-activity Events, LLC wishes to enter onto City-owned property for the purpose of using said property for the organization and administration of sports and recreational activities; and

WHEREAS, such access to the property requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement, in substantially the same form annexed hereto with such other terms and conditions as required by the Corporation Counsel, with Daily Organized Multi-activity Events, LLC to allow them access to athletic fields, basketball courts and Activity Center located in Delano-Hitch Recreation Park for the purpose of using said property for the organization and administration of sports and recreational activities.

AGREEMENT

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

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

DAILY ORGANIZED MULTI-ACTIVITY EVENTS, LLC, 296 Carpenter Avenue, Newburgh, New York 12550, hereinafter called "Licensee".

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

ARTICLE 1: Term.

This Agreement shall run from September 1, 2012 to August 31, 2014.

ARTICLE 2: Obligation of the City.

A. The City shall grant to the Licensee a revocable license to use the athletic fields, basketball courts and Activity Center located in the Delano-Hitch Recreation Park in the City of Newburgh for organization and administration of sports and recreational activities for the period of time set forth above pursuant to a written schedule to be submitted to and approved in writing by the City Manager or his designee and in accordance with all applicable rules and regulations for the use of the facilities.

B. The City shall provide field lighting and maintenance for players/participants for the organized activities in a location in the Delano-Hitch Recreation Park to be determined by the City. The City has sole authority to cancel or delay outdoor sports and/or other recreational activities due to inclement weather. The City will make reasonable attempt to notify Licensee of cancellation of such outdoor games, events or activities due to inclement weather within two (2) hours before game, activity or event is scheduled to begin.

C. The City shall have no obligation to provide personnel, uniforms, sports equipment or other supplies necessary for the sports, games and/or recreational activities organized by Licensee.

ARTICLE 3: Obligation of Licensee.

A. The Licensee shall organize and administer sports leagues, athletic games and other recreational activities at the licensed facilities. During the term of this Agreement, the Licensee shall provide the City Manager or his designee a written schedule of all sports, games, activities and other uses of the facility for each month at least 30 days in advance and failure to do so may result in City canceling any or all such sports, game(s), activities or uses. The Licensee shall provide the City with 48 hours notice to hold a rescheduled game or activity. All games and activities must

start on time except for weather delay as determined by the City. No game or activity may be scheduled to start before 8:00 a.m. or after 8:00 p.m.

B. The Licensee shall provide for all personnel, supplies and equipment necessary and proper for the sports leagues, athletic games or recreational activities as is required by their use of the licensed facilities.

C. The Licensee shall have a representative with authority over all activities present at all sports leagues, athletic games or other recreational activities at all times. The Licensee shall provide for the registration of participants and the collection of fees for all sports leagues, athletic games or other recreational activities conducted during the period of this agreement. Noise levels shall be kept at appropriate decibel levels so as not to disturb neighbors.

D. The Licensee shall, after each day of play, return the licensed facilities to the City on that same day to a clean condition free of all equipment, garbage and debris. All garbage generated shall be deposited in proper trash receptacle. The Licensee shall repair all damage incurred to the facilities during the exercise of the license at its own sole expense. Such repairs shall be performed immediately. Licensee agrees that if such damages are not promptly and completely repaired, Licensee shall remain liable for all consequences, direct and indirect, consequential and incidental, to the City resulting from the damages and from the unavailability of such facilities resulting therefrom.

E. The Licensee shall provide all necessary security and supervision of minors participating in sports leagues, athletic games, recreational activities or present as spectators during the period of this agreement. The Licensee shall be liable for any damage done to the premises by its officers, agents, servant, employees or invitees during the period of this Agreement.

F. Licensee agrees to meet with the City Manager or his designee upon the request of the City Manager during the term of this Agreement to review the Licensee's activities pursuant to its obligations under this Agreement.

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

ARTICLE 4: Payment.

A. The Licensee shall pay to the City, as and for a fee for the use of the facilities during the period of this agreement, FIFTY (50%) PERCENT of the gross fees collected by Licensee in organizing, scheduling and administering the sports leagues, athletic games and other recreational activities. Payment shall be remitted to the City of Newburgh by the Licensee on the last calendar day of each month.

B. The Licensee shall maintain books and records to account for the collections of fees in connection with the organizing, scheduling and administering of the sports leagues, athletic games and recreational activities and shall make such books and records available for the City's review upon ten (10) days notice to review same.

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

ARTICLE 5: Insurance.

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

B. The Licensee 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 Licensor. Except for Workers' Compensation, the City of Newburgh 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 Licensee and not those of the Licensor. Notwithstanding anything to the contrary in this Agreement, Licensee irrevocably waives all claims against the City of Newburgh for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 5. The provisions of insurance by Licensee shall not in any way limit Licensee'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 Broad form contractual Liability, bodily injury and property damage | \$1,000,000 each occurrence/ \$2,000,000 aggregate |

Licensee shall attach to this Agreement certificates of insurance evidencing Licensee's compliance with these requirements

C. 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 of Newburgh 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 and the Corporation Counsel and the City shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to Licensee. 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:

1. Policy retroactive dates coincide with or precede Licensee's start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);
2. Licensee will maintain similar insurance for at least three (3) years following termination of this Agreement; and
3. If the insurance is terminated for any reason, Licensee agrees to purchase an unlimited extended reporting provision to report claims arising from the services performed under this Agreement.

ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

- A. That it is financially solvent and that it is experienced and competent to perform the type of work or to furnish the consideration to be furnished by it; and
- B. That it is familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or play or those employed or engaged therein. It is understood and agreed between the parties that the Licensee shall have no right to control the actions of City employees nor any duty to supervise the actions of City employees.

ARTICLE 7: Permits and Regulations.

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

ARTICLE 8: City's Right to Terminate Agreement.

- A. The City shall have the right to stop work or terminate this agreement under the following terms and conditions:
 1. The Licensee refuses or fails to perform any of its obligations under this agreement; or

2. The Licensee fails to make prompt payment or perform work as required by this agreement; or
 3. The Licensee fails or refuses to comply with all applicable laws or ordinances; or
 4. The Licensee is guilty of substantial violation of any provision of this agreement.
- B. In the event the City elects to stop work or terminate this agreement on any ground or grounds set forth in subparagraphs (1) - (4) of paragraph A, the City shall provide the Licensee with written notice, no less than fourteen (14) days prior to such stop work or termination of this agreement, of the City's intent to so stop work or terminate this agreement and the ground or grounds therefore. In the event the Licensee shall cure such ground or grounds prior to the date noticed for stop work or termination of this agreement, the City shall not stop work or terminate the agreement on such grounds.
- C. The City, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days notice to the Licensee, terminate the agreement with the Licensee.

ARTICLE 9: Damages.

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

ARTICLE 10: Indemnity and Save Harmless Agreement.

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

ARTICLE 11: No Assignment.

In accordance with the provisions of Section 109 of the General Municipal Law, the Licensee is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement or of its right, title or interest in this agreement or its power to execute this agreement to any other person or corporation without the previous consent in writing of the City.

ARTICLE 12: Required Provisions of Law.

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

ARTICLE 13: Notices.

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

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

TO: Daily Organized Multi-activity Events, LLC, Licensee
Sterling Ponder
296 Carpenter Avenue
Newburgh, NY 12550

ARTICLE 14: Waiver.

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

ARTICLE 15: Modification:

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

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

THE CITY OF NEWBURGH

By: _____
RICHARD F. HERBEK
City Manager

DAILY ORGANIZED MULTI-ACTIVITY
EVENTS, LLC

By: _____
STERLING PONDER

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

RESOLUTION NO. 147-2012

OF

AUGUST 13, 2012

A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF
THE HANOVER INSURANCE COMPANY AS SURETY FOR
CANALE ELECTRIC CORPORATION AND THE CITY OF NEWBURGH

WHEREAS, Canale Electric Corporation (Canale) and the City of Newburgh (City) entered into a contract for electrical services in connection with the construction of a new Courthouse; and

WHEREAS, the City has identified deficiencies in work performed by Canale and withheld the contract balance of \$127,986.07; and

WHEREAS, Canale filed for bankruptcy protection and is no longer in business; and

WHEREAS, The Hanover Insurance Company (Hanover), as Canale's surety, has made a demand for the funds held by the City for payment of claims made by Canale's creditors and subcontractors; and

WHEREAS, both the City and Hanover have claims to the funds held by the City; and

WHEREAS, the parties wish to resolve their respective claims to the funds held by the City and to settle all the disputes among them to avoid the time and expense of further legal proceedings; and

WHEREAS, this Council has determined that a settlement 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, the City's attorneys are hereby authorized to settle this matter by releasing the sum of \$63,993.04 to The Hanover Insurance Company, as surety for Canale Electric Corporation and that City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

RESOLUTION NO.: 148 - 2012

OF

AUGUST 13, 2012

**A RESOLUTION DIRECTING THE CITY MANAGER
TO TERMINATE THE USE OF CITY OWNED VEHICLES
USED BY THE SUPERINTENDENT OF PUBLIC WORKS, SUPERINTENDENT OF
WATER AND CITY ENGINEER**

WHEREAS, Councilman Cedric Brown has requested that the City Manager terminate the use of on-call City owned vehicles used by the Superintendent of Public Works, Superintendent of Water and City Engineer; and

WHEREAS, the City Manager has made his opposition to such request clear as these vehicles are emergency vehicles required for use to return to work 24 hours per day 7 days a week in order to respond to emergencies such as fires, storm related damages, snow removal, snow and ice emergencies, downed trees, water and sewer main breaks, sink holes, manhole lids off, catch basins off, traffic lights out, recreation activities creating problems in City parks, board ups and securing vacant buildings, towing vehicles involved in incidents on City roads, sewer pump stations down and certain police related incidents; and this will affect the City Manager's ability to manage and operate the City in an effective manner;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby directed to terminate the use of City owned vehicles used by the Superintendent of Public Works, Superintendent of Water and City Engineer.

RESOLUTION NO.: 149 - 2012

OF

AUGUST 13, 2012

A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE IN REM TAX FORECLOSURE
OF LIENS FOR THE YEAR 2010 RELATIVE TO
282 FIRST STREET (SECTION 22, BLOCK 6, LOT 26)

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such action being designated as Orange County Index Numbers 2010-012561; and

WHEREAS, the first position mortgage holder, by their attorney, have advised the City that they are prepared to settle such action; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter;

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 withdraw the lien on the property located at 282 First Street (Section 22, Block 6, Lot 22), in the City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Eleven Thousand Six Hundred Twenty Five And 13/100 (\$11,625.13) Dollars representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, including but not limited to all open 2011-2012 school taxes, water charges and sewer charges, are all paid in full by certified or bank check on or before August 27, 2012.

RESOLUTION NO.: 150 -2012

OF

AUGUST 13, 2012

A RESOLUTION APPROVING THE CONSENT JUDGMENT AND AUTHORIZING THE CITY MANAGER TO SIGN SUCH CONSENT JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDING AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NO. 6996-2011, INVOLVING SECTION 4, BLOCK 12, LOT 12 (LIBERTY STREET, L.P.)

WHEREAS, Liberty Street, LP has commenced a tax certiorari proceeding against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2011-2012 tax assessment year bearing Orange County Index No. 6996-2011; and

WHEREAS, it appears from the recommendation of the City Assessor, Joanne Majewski and Richard B. Golden, Esq. of Burke, Miele & Golden, LLP, Special Counsel for the City of Newburgh in the aforesaid proceedings, upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matters as more fully set forth below is reasonable and in the best interests of the City; and

WHEREAS, Liberty Street, LP is willing to settle this proceedings without interest, costs or disbursements, in the following manner: That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 4-12-4 be reduced to a market value of \$ 1,000,000.00.

NOW, THEREFORE BE IT RESOLVED, that the proposed settlement as set forth and described above and the attached Consent Judgment is hereby accepted pursuant to the provisions of the General City Law and other related laws.

BE IT FURTHER RESOLVED, that Richard F. Herbek, City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; and Richard B. Golden, Esq. on behalf of Burke, Miele & Golden, LLP, as Special Counsel, be and they hereby are designated as the persons for the City who shall apply for such approval pursuant to the aforesaid laws.

SUPREME COURT – STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of
LIBERTY STREET, L.P.,

Petitioner,

CONSENT JUDGMENT

- against -

BOARD OF ASSESSMENT REVIEW AND
ASSESSOR OF THE CITY OF NEWBURGH
AND THE CITY OF NEWBURGH,

Index No. 2011-006996

Respondents.

For the review of the assessment for the year 2011
of certain real property in the said CITY OF
NEWBURGH.

-----X
PRESENT: HON. CATHERINE M. BARTLETT

UPON THE CONSENT attached hereto duly executed by the attorneys for all the parties and by all the parties, it is

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

497 Liberty Street, Tax Map No. 4-12-4

be reduced in market value from \$1,334,300.00, to a market value of \$1,000,000.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the Petitioner's real property taxes on said parcels above described for the 2011-2012 School, County and City taxes be adjusted accordingly and that any overpayment by Petitioner be refunded upon the entering of this Consent Judgment with the Orange County Clerk's Office; and it is further,

ORDERED, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and records and upon the assessment roll of said City the entries, changes and corrections necessary to conform such reduced market value; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amounts, if any, paid as City taxes and City Special District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the County of Orange, the amounts, if any, paid as County taxes and County Special District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the Newburgh City School District, the amounts, if any, paid as School District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be no interest paid or credited in connection with this Consent Judgment provided any refund due is made within forty-five (45) days of the service of notice of entry of this Consent Judgment; and it is further,

ORDERED, that the provisions of Real Property Tax Law § 727 shall be applicable to the 2012-2013, 2013-2014 and 2014-2015 assessment years; and it is further,

ORDERED, that upon compliance with the provisions of this Consent Judgment, these proceedings are settled without costs or disbursements to either party as against the other.

Signed: _____, 2012
Goshen, New York

ENTER:

HON. CATHERINE M. BARTLETT
SUPREME COURT JUSTICE

ON CONSENT:

HON. RICHARD F. HERBEK
Acting City Manager
Dated:

PAUL J. GOLDMAN, ESQ.
Segel, Goldman, Mazzotta & Siegel, P.C.
Attorney for the Petitioner
Dated:

HON. JOANNE MAJEWSKI
Assessor
Dated:

RICHARD B. GOLDEN, ESQ.
Burke, Miele & Golden, LLP
Attorney for the Respondents
Dated: