

A regular meeting of the City Council of the City of Newburgh was held on Monday, October 28, 2013 at 7:05 P.M. in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

The Prayer was led by Rabbi Larry Freedman with Temple Beth Jacob followed by the Pledge of Allegiance.

Present: Mayor Kennedy, presiding; Councilwoman Angelo, Councilman Brown (arrived at 7:15 p.m.), Councilwoman Lee- 4

Absent: Councilman Dillard - 1

COMMUNICATIONS

Councilwoman Angelo moved and Councilwoman Lee seconded that the minutes of the October 15, 2013 City Council meeting be approved.

Ayes - Councilwoman Angelo, Councilwoman Lee, Mayor Kennedy - 3

CARRIED

PROPOSED PUBLIC HEARINGS

RESOLUTION NO.: 215-2013

OF

OCTOBER 28, 2013

A RESOLUTION SCHEDULING A PUBLIC HEARING FOR NOVEMBER 12, 2013 TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW AMENDING CHAPTER 70 ENTITLED "PARKING VIOLATIONS BUREAU" OF THE CODE OF THE CITY OF NEWBURGH TO INCREASE FINES FOR CERTAIN PARKING VIOLATIONS

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a Local Law amending Chapter 70, entitled "Parking Violations Bureau" of the Code of the City of Newburgh to increase fines for certain parking violations 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 12th of November, 2013, in the 3rd Floor Council Chambers, City Hall, 83 Broadway, Newburgh, New York

Councilwoman Angelo said that she is not in favor of increasing these fees.

Councilwoman Lee suggested that they table this resolution.

Mayor Kennedy said that she voted against this last time because she wanted additional information.

Councilman Brown told Councilwoman Lee that they hashed through all of this at the Work Session and if there were any issues they could have hashed them out at that time.

Mayor Kennedy said that they need to get this resolved because this is part of the Budget planning and these amounts are being estimated into the Budget. They did discuss this at the Work Session so she doesn't understand why they didn't resolve this then.

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

Ayes - Councilwoman Angelo, Councilwoman Lee - 2

Nays - Councilman Brown, Mayor Kennedy - 2

DEFEATED

Interim City Manager, James Slaughter, noted that this is just a resolution to hold a Public Hearing and if the increased fees are not acceptable to the Council then they can adjust them to a reasonable amount.

Councilman Brown said that Councilwoman Lee's objective to this local law is that she just opened a new business on Broadway and she parks at a meter. The Council has parking permits allowing them to park at meters when they are conducting City business and Councilwoman Lee has argued with Parking Enforcement about putting tickets on her car when she has been parked at a meter on Broadway when she is not conducting City business. So now instead of her ticket being \$15.00 it would be \$30.00 so let's call it what it is.

Councilwoman Lee said for the record that her business isn't even open yet so she wasn't in that office. She was in another officer when she was ticketed and she was conducting City business. She told Councilman Brown that he was on the attack again and her reasons are that she doesn't want the City residents to have their parking fines increased. She added for the record that she has a parking lot with six parking spaces.

Councilman Brown said, *"She thinks that she is better than anybody in this City and she is not"*.

Mayor Kennedy said that we will not have any personal attacks so this needs to stop right now. She suggested that they schedule the Public Hearing and they can look at the fines and work them out.

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

Ayes - Councilwoman Angelo, Councilman Brown, Mayor Kennedy - 3

Nays - Councilwoman Lee - 1

ADOPTED

PROPOSED PUBLIC HEARING

RESOLUTION #216-13

OF

OCTOBER 28, 2013

A RESOLUTION SCHEDULING A PUBLIC HEARING FOR NOVEMBER 12, 2013 TO RECEIVE PUBLIC COMMENT ON THE CITY OF NEWBURGH'S PROPOSED ACTIONS WITH RESPECT TO THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR THE CONSOLIDATED PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT FOR FISCAL YEAR 2014

BE IT RESOLVED, by the Council of the City of Newburgh, New York that there is scheduled a public hearing to receive public comment on the City of Newburgh's proposed actions with respect to the Community Development Block Grant Program for the Consolidated Plan for Housing and Community Development for FY 2014; and that such public hearing be and hereby is duly set to be held at 7:00 p.m. on the 12th day of November, 2013 in the City Council Chambers, 83 Broadway, City Hall, 3rd Floor, Newburgh, New York.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Barbara Smith, Powell Avenue, questioned Resolution #227-13. What is Project I Am?

Sheila Monk, City of Newburgh, questioned Resolution #220-13 regarding the Curfew. Will it affect older siblings taking the younger children out for Halloween? Also in regard to Resolution #227-13 she would like to know who the founder is and what is their background.

Police Chief, Michael Ferrara, explained that we have had this Curfew for the past several years on Halloween and the night before and they have not had any problems or issues. It is for unescorted youth who are out late at night for no reason.

Mayor Kennedy said that this is a temporary Curfew to keep our youth safe for Halloween night.

Joel Sheets, said that Project I Am is an initiative that began about eight months ago and they would like to introduce this whole project to the City of Newburgh with a Campaign that reads, "*I Am Newburgh*". The dual goal is to create intrigue within the City and to take ownership that we are the City. As we enjoy the victories of Newburgh we also have to own the challenges. This is a small step but they believe that in time it will gain momentum and become a City wide initiative.

Steve Hittman, Chief Operation Officer with Complus Data Innovations, said that they are the Parking Ticket Management Company for the City of Newburgh and they were involved in an RFP process but were not aware that some of the criteria had been changed. Their services could be offered to the City for tens of thousands of dollars less than the other vendor and they can perform all of the services just as they are performing all of the services that are being asked of them right now. He said that he was informed by the Mayor that there was no record of Complus turning in an RFP but they did submit one. They can do the job for significantly less than the company it is about to be award to and any City these days should be looking to get the most that they can for the most reasonable and effective price. He would like the opportunity to meet with the Council and discuss this so he is asking the Council to table this for tonight.

Omari Shakur, City of Newburgh, said that Ordinance #11-2013 is regarding parking permits. On First Street between Grand and Liberty the

kids going to school at night take up the parking lots and the people coming home from work can't park so is that what this Ordinance is about?

Interim City Manager, James Slaughter responded that it is.

Mr. Shakur continued by asking what Resolution #221-13 is about. What are they studying for \$99,500.00? In regard to Resolution #220-13, on October 30th, he will be holding a Candlelight Vigil for his son who was killed by the Police on the corner of William Street and Broadway. A lot of his grandchildren will be there but as long as they are with grownups will this Curfew affect them?

Mayor Kennedy responded that as long as they are with grownups they are fine. In regard to #221-13 and #222-13 we are under a Consent Order with the DEC.

Interim City Manager, James Slaughter, said that this is part of the ERP program that we are engaged in with the Department of Environmental Conservation.

Mayor Kennedy said that we have to clean it up and we don't have a choice otherwise we will end up with fines from the Government.

Janet Gianopoulos, City of Newburgh, said that it sounds like there are a lot of disagreements about the parking so items #7, #8, #9 & #10 should probably not be voted on until those items are clarified. They just heard someone say that they could save the City tens of thousands of dollars. In regard to Project I Am, she did not hear who "we" is. She added that she was disappointed in the way that the parking was handled. It should have been discussed at a Work Session and not passed through if there were so many questions. When she drives down Broadway she has to avoid generators that are sitting in the street so there are many things that need to be addressed by this and we need to do it through further legislation about parking.

Roxie Royal, City of Newburgh, said that they were all so happy that there was not going to be a property tax increase this year but they are increasing the parking fees. She thought they were making sure that people were paying the parking fines that had been in arrears for years. Now you want to raise fees where people have been parking for years for nothing. This is another burden on the taxpayers of this City and she thinks that they should think this through. People come home from work and there is no place for them to park so what are they supposed to do?

Mayor Kennedy reminded everyone that if you pay your parking meters and you park appropriately then none of those fines will apply to you. These are fines not fees which are for not following the law. She wanted to remind everyone that these are parking fines not fees.

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

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

There were no comments.

RESOLUTION NO.: 217 - 2013

OF

OCTOBER 28, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH
PROFESSIONAL ACCOUNT MANAGEMENT, LLC
FOR MUNICIPAL PARKING SERVICES AND RELATED EQUIPMENT**

WHEREAS, the City of Newburgh has requested proposals regarding Municipal Parking Services and Related Equipment; and

WHEREAS, proposals have been duly received and reviewed and it has been determined that Professional Account Management LLC ("PAM") has submitted the proposal that would most benefit the City of Newburgh; and

WHEREAS, a copy of the agreement with PAM is attached hereto and made a part of this resolution;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager be and he is hereby authorized to enter into an agreement with Professional Account Management LLC in accordance with the proposal with all such terms and conditions as may be required by the Corporation Counsel for the Municipal Parking Services and Related Equipment.

John Aber, City Comptroller, explained the RFP Process. They put out a solicitation and requested very specific services that they wanted to be provided and vendors then bid on them with sealed bids. In the case of the Parking there were three bids received, they were opened in his office and logged in at which time they were turned over to Keith Douglas who did his analysis. He reviewed all bids submitted and looked for what was in the RFP compared to the services that were offered. In some cases one vendor may have been lower on one item and higher on another but the overall award is based on what is best for the City. In most cases it is not always lowest bidder wins it is lowest, most responsive and who provides the best service to the City. For clarification, there were three bids submitted, all three vendors were evaluated and Complus was one of them.

Mayor Kennedy said that she was given erroneous information that the RFP from Complus was not received and she apologized for that. As they look at the three vendors submitted the one that has been recommended answered what we needed.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee,
Mayor Kennedy - 4

ADOPTED

217-13
GOODS AND SERVICES AGREEMENT

This Goods and Services Agreement (Agreement) is made effective on this _____ day of _____, 2013 (Effective Date) by and between the City of Newburg (City) having a location at 83 Broadway, Newburg, New York 12550 U.S.A. and Professional Account Management, LLC its subsidiaries, affiliates, parent, agents and representatives (collectively, PAM), a Wisconsin corporation having a location at 633 West Wisconsin Avenue, Suite 1600 Milwaukee, Wisconsin 53203 U.S.A. City and PAM may hereinafter be referred to individually as Party, or collectively as Parties.

WHEREAS, City intends that PAM provide the goods and services described herein, and PAM intends to provide such goods and services subject to the mutually agreed terms and conditions herein, and

WHEREAS, City has completed all necessary steps for procurement and retention of goods and services under applicable City policies, procedures and other applicable rules and regulations.

NOW, THEREFORE, in consideration of the sums to be paid to PAM, the promises and mutual agreements stated herein, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows;

1. Term of Agreement. This Agreement remains in effect for three (3) calendar years from the Effective Date (Term). This Agreement may be extended (Extension) in writing by mutual agreement of the Parties. During the Term and any Extension, PAM retains all ownership, title and license to the Products.
2. Agreement and Precedence. This Agreement governs all Orders and all products and services provided by any parent, subsidiary, affiliate, subcontractor, agent or representative of PAM as described herein or in any writing amending this Agreement. Any schedules, attachments and exhibits referenced herein, whether or not attached, and any purchase orders provided by City and accepted in writing by PAM (Orders), are hereby incorporated and made part of this Agreement. Should any conflict exist between or among the body of this Agreement, schedules, exhibits, attachments, and Orders, the following order of precedence shall apply;
 - 2.1. the body of this Agreement
 - 2.2. Schedule A - Pricing
 - 2.3. Schedule B - Processing Services and Schedule C - Collections Services, each of equal significance
 - 2.4. Schedule D - Support, Warranty and Returns
 - 2.5. any Orders
3. Invoices and Payments. City shall maintain and control a bank account (City Account) for purposes of deposit of funds collected by PAM in performance of this Agreement. Costs related to such account are the sole responsibility of City. Where required, PAM will invoice City monthly or as otherwise described in the Schedules. All invoices are payable net thirty (30) days from date of invoice. PAM reserves the right to add one and one-half percent (1.5%) interest, or the maximum allowed by law, per month to invoices past due by ten (10) days or greater. Payments shall be remitted to:
PAM P.O. Box 2081 Milwaukee WI 53201-2081
4. Reimbursement and Set off. Any fees, costs or expenses due or required under this Agreement will be set off against amounts due the City. Should funds collected be insufficient for payment in full through set off, the City understands and acknowledges that PAM will invoice the City and City shall pay all costs and expenses due hereunder.
5. Confidential Information. PAM acknowledges that City is a public agency with certain legal obligations for transparency and public disclosure. City acknowledges that the goods and services PAM provides incorporate proprietary design, processes and technology that if disclosed would materially harm PAM. Therefore, City will not itself, or assist a third party in, reverse engineer, document, abuse or otherwise evaluate or use the goods and services without the express written permission of PAM. All data produced or compiled by PAM shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of the other Party. All financial, statistical, personal, technical, and other data and information relating to PAM's operations shall be presumed to be confidential regardless of whether such

GOODS AND SERVICES AGREEMENT

information has been disclosed as confidential. City shall protect all confidential information from unauthorized use and disclosure by use of the same or more effective procedures as City requires of its own personnel to protect its own confidential information. City is not required by this paragraph to keep confidential any data or information that is or becomes publicly available, is already rightfully in City's possession and not subject to any requirement to maintain confidentiality, is independently developed by City outside the scope of the Agreement and without the use of the confidential information, or is rightfully obtained from third parties.

6. Patents, Trademarks, Copyrights, Ownership. All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in the performance of this Agreement are the property of the Party that so invented, developed, created or discovered such intellectual property. For any non-hosted, stand-alone system, City acknowledges and agrees that in the event City elects to sell, license, or dispose of the system, or any portion thereof, in any way without the express written consent of PAM, this Agreement automatically and immediately terminates without notice. The equipment, firmware and software (Products) provided by PAM are proprietary products of PAM and protected under United States copyright laws. The Software provided for installation on personal computers or server systems may be copied for archival purposes only and may not be used on more central processing units (CPUs) concurrently than the number of purchased licenses without prior written approval of PAM. PAM hereby grants to City a revocable, non-exclusive license to use the Products provided during the Term and any Extensions of this Agreement and solely for the purposes contemplated under this Agreement.

NO LICENSE UNDER ANY PATENTS, COPYRIGHTS, TRADEMARKS, MASK WORKS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY OF PAM IS GRANTED OR IMPLIED UNLESS EXPRESSED IN WRITING. PAM AT ALL TIMES RETAINS ALL OWNERSHIP AND RIGHTS TO ALL PRODUCTS PROVIDED UNDER THIS AGREEMENT.

CITY HEREBY ACKNOWLEDGES AND AGREES THAT IT IS RESPONSIBLE FOR ALL COSTS RELATED TO DAMAGE AND REPAIR OF PRODUCTS DIRECTLY OR INDIRECTLY RELATED TO ANY ABUSE, MISUSE, NEGLIGENCE, IMPROPER MAINTENANCE, VANDALISM, OR ACTS OF GOD.

7. Relationship of the Parties. PAM agrees and understands that services performed under this Agreement are performed as an independent contractor and not as an employee of City and that PAM acquires none of the rights, privileges, powers or advantages of City employees. This Agreement does not create any relationship of agency, partnership or joint venture between the Parties. Nothing in this Agreement gives any Party the right to use any corporate names, trademarks or trade names of any other Party.
8. Indemnification. Each Party indemnifies and will defend the other, its employees and agents from claims, damages and liability occasioned by or arising out of negligence in the performance of this Agreement. Except to the extent caused by the sole negligence or willful misconduct of either Party, each Party shall indemnify and hold and save each other, its officers, agents and employees, harmless from liability of any kind, including all claims, costs (including defense) and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, costs (including defense) and losses accruing or resulting to any person firm, or corporation that may be injured or damaged by the other in the performance of this Agreement. This representation and warranty shall survive the termination or expiration of this Agreement.

Each Party shall indemnify and hold and save each other, its officers, agents, and employees, harmless from liability of any kind, including claims, costs (including defense) and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement.

9. Limitation of Liability and Disclaimer. UNLESS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, AND WHETHER OR NOT THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO WARRANTY, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGES, LOSS OF REVENUE, LOST PROFITS, BUSINESS OR GOODWILL.

GOODS AND SERVICES AGREEMENT

10. Insurance. During the Term, PAM will maintain insurance in the type and amount specified in Attachment 1 – Proof of Insurance Certificates.
11. Sub-contracting. PAM is authorized to engage subcontractors at PAM's sole expense. PAM shall notify the City of the name, address, and other information reasonably requested regarding any proposed subcontractor, in advance of use of such subcontractor. City shall respond in writing within two (2) business days of PAM's request for approval. Approvals under this section will not be unreasonably withheld by the City.
12. Licenses and Certificates of Authority. During the Term and any Extensions, PAM will maintain all licenses and certificates of authority required by law.
13. Compliance with Laws. Parties shall ensure full compliance with federal, state and local laws, regulations, directives, ordinances and executive orders applicable to the performance of this Agreement.
14. Audit and Records.
 - 14.1. PAM agrees that City, or any of its duly authorized representatives may, at any time during normal business hours and upon reasonable notice to PAM, have access to and the right to examine and audit books, documents, papers, records, and other items that relate to accounting and performance under this Agreement.
 - 14.2. PAM shall maintain these records for a period of three (3) years from the date of any termination of this Agreement. The inspection requirements of this section shall survive any termination of the Agreement by no less than three (3) years.
 - 14.3. City shall maintain and control a bank account (City Account) for purposes of deposit of funds collected by PAM in performance of this Agreement. At least monthly, City shall audit records related to the deposit of funds by PAM into City Account and reconcile such records with deposit data provided by PAM. City shall report any variance to PAM within sixty (60) calendar days after the closing date of the record that includes the alleged variance. City shall provide all records and documents related to any variance, as requested by PAM, including without limitation;
 - 14.3.1. bank deposit slips
 - 14.3.2. cumulative financial reports
 - 14.3.3. account-related communications
 - 14.4. City acknowledges and agrees that PAM is not be responsible for variances caused in whole or in part by City, any financial institution, vandalism, theft, force majeure events or variances not reported as required under this section.
15. Arbitration. Any controversy arising out of or related to this Agreement or the breach thereof shall be settled by arbitration in accordance with the Rules of the American Arbitration Association (AAA) located in New York State. Another location for arbitration under the Rules of AAA may be chosen if mutually agreed by the parties. The consideration given by the Parties herein is deemed consideration adequate to support this Agreement for arbitration. A judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof in accordance with New York State law except as otherwise provided herein. The arbitrators shall have all powers of a court of law in the relevant jurisdiction. Such powers shall include but shall not be limited to: (a) the power to issue temporary restraining orders and injunctions; (b) the power to award damages; (c) the power to issue subpoenas; and (d) the power to issues all orders and to take all actions necessary to enforce their jurisdictions as provided by law. The identity of the arbitrator shall be agreed upon by the Parties. In the absence of an agreement, one (1) arbitrator shall be selected by Resolute under its standard selection procedures using any reasonable and fair method. An award in arbitration shall be final and binding upon the Parties and enforceable under law. The prevailing Party in any arbitration proceeding herein shall be awarded its costs and expensed including reasonable attorney fees. For purposes of this contract, a "prevailing Party" shall be the Party awarded any non-monetary relief sought or more than fifty percent (50%) of the monetary damages sought.
16. Termination and Notice. Either Party may terminate this Agreement or any part thereof for any reason. Notice of termination must be provided in writing a minimum of sixty (60) days in advance of the effective termination

GOODS AND SERVICES AGREEMENT

date. City understands and acknowledges that performance under this Agreement requires substantial capital and other investment by PAM. Therefore, any termination of this Agreement by the City within the first year of the Term for any reason other than material breach of this Agreement will result in termination fees and costs ("Termination Fees") to the City.

Termination Fees are at the sole discretion on PAM and shall be reasonable, supported by evidence, and subject to generally accepted accounting principles. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports and materials ("Materials") prepared by PAM specifically and solely for the City under this Agreement shall become the property of, and be promptly delivered to, the City. In the event of any termination of this Agreement, City shall return all Products within ten (10) business days of the effective termination date. PAM will provide a final invoice and City shall pay all outstanding amounts as herein described including costs of Products not returned in compliance with this section. Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder will be in writing and deemed delivered (1) business day after delivery by a reputable overnight delivery service; or upon delivery by courier or in person to the following addresses:

To City:

City of Newburg
83 Broadway Newburg, New York 12550

To PAM:

Professional Account Management, LLC
Contracts
633 West Wisconsin Avenue Suite 1600 Milwaukee, Wisconsin 53203
contracts@duncansolutions.com

17. Force Majeure. A nonperforming Party shall not be held in default or breach due to any force majeure event. A force majeure event ("Event") is any act or event, whether foreseen or unforeseen; (a) that prevents the nonperforming Party, in whole or in part, from performing its obligations under this Agreement, and (b) is beyond the reasonable control of and not the fault of the nonperforming Party, and (c) the nonperforming Party has made all reasonable efforts but has been unable to avoid or overcome the act or event. An Event includes but is not limited to flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone, typhoon, tornado, explosion, civil disturbance, act of God or public enemy, terrorist, military action, epidemic, famine or plague, shipwreck, action of a court or public authority, or strike, work-to-rule action, other labor disputes, each on an industry-wide, region-wide or nationwide basis. An Event does not include economic hardship, changes in market conditions, insufficiency of funds, unavailability of equipment or supplies or labor other than strikes, or work-to-rule actions. No obligation by either the performing Party or the nonperforming Party to make any payment required under this Agreement is excused as a result of the Event. Upon occurrence of an Event, the non performing Party shall furnish the other Party written notification describing the Event, including an estimate of its expected duration and probable impact on the performance of the nonperforming Party's obligations under this Agreement.
18. Assignment. This Agreement is for the sole use of City and cannot be used by or for any other entity without prior written approval by PAM. The firmware or software cannot be provided to any entity or unlicensed user under any circumstances. In the event of loss, misplacement or damage of the original software or archive copies, PAM will provide an additional copy upon written request and at the sole cost of the City.
19. No Third-Party Beneficiaries. The Parties specifically intend and agree that no one other than the Parties to this Agreement, except either Parties subsidiaries, affiliates, successors and any controlling parent, whether now existing or hereafter resulting from a merger, acquisition, or restructuring of the Party, is or shall be deemed to be a third-party beneficiary of any of the rights or obligations set forth in this Agreement.
20. Modification and Waiver. This Agreement may only be modified in writing signed by duly authorized representatives of both Parties. The failure of either Party to insist upon or enforce the performance of this Agreement, or the failure to exercise any right or privilege herein conferred, is not a waiver of any such

GOODS AND SERVICES AGREEMENT

covenant, conditions, rights, or privileges. No different or additional terms, conditions, amendments or modifications of any type are valid or have any effect on this Agreement unless mutually agreed between the Parties in a separate writing.

21. Severability. If any provision in this Agreement, or the application thereof to any person or circumstance is determined by any competent court to be held invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remainder of this Agreement, unless that effect is made impossible by the absence of the omitted provision.
22. Counterparts. This Agreement may be executed in any number of counterparts, each of which is deemed an original and all of which taken together constitute one Agreement. Any legible, executed copy of this Agreement is deemed an original.
23. Applicable Law. This Agreement is construed and will be enforced under the laws and in the courts of the State of New York without consideration to any conflicts of laws principles.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last written below.

CITY OF NEWBURG, NEW YORK

Signature

Printed Name

Title

Date

PROFESSIONAL ACCOUNT MANAGEMENT, LLC.

Signature

Printed Name

Jason Johnston

Title

President

Date

GOODS AND SERVICES AGREEMENT

SCHEDULE A – PRICING

\$3.67 per citation issued includes;

- a. use of four (4) AutoCITE handheld citation issuance units and PAM-owned charging station
 - b. maximum eight (8) user licenses
 - c. Three (3) late notices with late fees (Late Notice)
 - d. One (1) judgment notice (Judgment Notice) after final late notice
 - e. hosted AutoISSUE and AutoPROCESS software
 - f. electronic citation ticket stock and payment envelopes
 - g. manual ticket stock for up to 3,000 tickets per year
 - h. use of two (2) PAM-owned cashiering workstations (includes PC, printer, cash drawer, display pole, barcode scanner)
 - i. internet and IVR inquiry and payment solution
 - j. weekly state of New York DMV registered owner request export/import
 - k. configuration and implementation (including standard data transition)
 - l. warranty, maintenance and support
 - m. account management
2. Collections Program 30% Contingency Fee
3. The City shall provide;
- a. reliable electricity and broadband internet connectivity where required, and
 - b. appropriate and safe cashiering workspace, and
 - c. cashiering printer supplies, and
 - d. forward of manual tickets and drop box payment to PAM, and
 - e. cashiering services staff, and
 - f. management and issuance of all refunds,
 - g. manage all hearings and notify PAM of result
4. Debtors will be charged a convenience fee of \$2.95 for credit card payment transactions less than \$100.00 or 5% of the credit card transaction amount if greater than \$100.00.
5. All postage is the responsibility of the City. PAM shall pay all postage and itemized such costs in monthly reconciliation to the City. City is responsible for its cost of all other consumable supplies.
6. Pricing is based on minimum 20,000 citations issued annually including a maximum of 3,000 manual citations to be entered into system by PAM. Pricing is subject to change based on volume.
7. The collection Contingency Fee is in addition to any and all other costs including but not limited to court costs, sheriff's fees, interest, late fees, investigatory fees, credit reporting fees or other costs incurred directly or indirectly by PAM in collection of amounts owed under this Agreement.
8. Automatic annual price adjustments (Adjustment(s)) based on the City area Consumer Price Index (CPI) will take effect on or about three (3) years after the Effective Date of this Agreement and annually thereafter including any Extension(s). The increase is a percentage equal to the percentage increase in the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas (CPI-U) for the twelve (12) month period ending in June immediately prior to the scheduled Adjustment
9. During the Term and any Extension, PAM retains all ownership, interest and title to all Products. City shall not itself place or allow, and shall insure against and prevent, any lien or other interest that may be claimed against the Products.

GOODS AND SERVICES AGREEMENT

SCHEDULE B – PROCESSING SERVICES

1. Referral and Reconciliation. PAM shall receive and process parking citations that the City delivers to it. The City shall deliver, mail, or transmit all parking citations on a daily basis. PAM will provide a daily reconciliation of the number of citations delivered by the City.
2. Computer Programs and Hardware. PAM will provide all software, written procedures and other supporting items required in performance of this Agreement. PAM shall be responsible for the warranty and maintenance of all hardware and software including hosted AutoISSUE and AutoPROCESS. The City is responsible for any damage, loss, or theft of computer hardware, software, or equipment used by the City at the City location. The City will provide insurance coverage for such equipment as described herein.
3. Remittance. Payments on Citations made directly to PAM will be deposited by PAM into the City Account. PAM will provide a monthly reconciliation and report of activities to the City, up to and including the date of any expiration or termination of this Agreement, within thirty (30) calendar days of such expiration or termination.
4. NSF and Disputed Payments. In the event that any debts reported to the City as paid are subsequently returned NSF or reversed as disputed, PAM will reverse the amount of such debt payment and all fees taken on such payment in the current month's deposits and reporting.
5. Base Processing. Notice of illegal parking or violation (collectively 'Citations') issued by the City, whether through AutoPROCESS or manually, will be entered into PAM's system and cleared upon payment or other disposition. Requests for Registered Owner information will be sent to the appropriate Departments of Motor Vehicles (DMV). Citations will be generated and mailed by PAM to the Registered Owner and the penalty or fine amount requested. Debtor payments by mail will be made directly to PAM. DMV registration liens will be placed on vehicles having unpaid fines and fees in compliance with the New York DMV and other applicable state and local laws. DMV liens shall be removed through DMV when the entire amount of parking citation fines, fees, and penalties due against the vehicle are satisfied. No extra processing charge will be made for a citation incorrectly processed and subsequently corrected and re-entered into the database. PAM shall provide hearing scheduling and disposition posting as forwarded by the City.
6. Suspension of Processing. PAM shall suspend processing any citation referred to it upon written notice to do so by the City. PAM shall maintain records indicating any suspension resulted by the City.
7. Computer System. PAM will provide the City with internet inquiry capability at the City location for retrieval of parking citation information. User specific licenses will be installed at the City location. The City is responsible for all electricity, broadband internet connection and related costs.
8. Collection and Deposit of Funds. PAM shall collect and deposit funds received for the payment of Citation fines and fees into the City Account. Costs related to such account are the sole responsibility of CLIENT. All citation revenues will be deposited in the CLIENT bank account by the end of the next banking day of receipt by PAM. Deposits will be batched in increments of one hundred (100) to limit the number of bank transactions necessary. A maximum of three (3) deposits daily will be made.
9. Collection Disbursement. PAM shall disburse to CLIENT on a monthly basis, all monies on deposit from the payment of parking citation fines and fees. Disbursement will be made after the close of the processing month beginning the month following the Agreement date.
10. IVR and Internet Payments. PAM shall provide the public with the ability to pay parking citations using an accepted credit card via an Interactive Voice Response (IVR) system or the internet. The cost for these services, including credit card discount fees, will be recovered by PAM in the form of a per transaction convenience fee assessed to the Debtor for each transaction.
11. Customer Service. PAM will provide a toll-free Customer Service number listed on all correspondence for debtors to contact PAM for any reason.

GOODS AND SERVICES AGREEMENT

SCHEDULE C – COLLECTION SERVICES

1. Performance by City

- 1.1. Authority to Collect. The City hereby authorizes PAM to use any legal means necessary to collect Debts placed with PAM by the City upon issuance of the Judgment Notice.
- 1.2. Ownership of Debts. The City maintains ownership of all Debts placed with PAM for collection under this Agreement. The City maintains all legal right and title to Debts unless otherwise agreed in writing between the Parties.
- 1.3. Duty to Provide Information. The City agrees to provide PAM with all information obtained regarding each Debt placed with PAM under this Agreement. It is the obligation of the City to provide PAM with all information that may prohibit or delay the collection of the Debt or in any way impact the ability of PAM to collect the Debt, including but not limited to bankruptcy, death, legal disability or other potential or actual defenses, including statute of limitations defense.
- 1.4. Warranties. Where applicable, the City warrants that, to the best of its knowledge, the Debts placed with PAM have been reviewed by the City in accordance with this Agreement prior to transfer to PAM, and that the balances reported to PAM are true and accurate, that all obligors on Debts have been disclosed and that all disputes and defenses of debtors have been reported to PAM.
- 1.5. Notice of Dispute. The City will inform PAM in writing, or by such other means as the Parties may expressly mutually agree from time to time, of any Debts subject to this Agreement that have been or are in dispute. Disputes under this provision include oral and written indications and statements by the debtor or any third party that the Debt is in dispute, and includes but is not limited to a request for validation of the Debt. If such dispute is made in writing by debtor, the City will notify PAM of the date of the writing and provide PAM with the original written dispute or a copy thereof.
- 1.6. Continuing Obligation. The City will continue to provide the most current version of the information required under this Agreement throughout the Term and any Extension.
- 1.7. Authorization to Receive and Endorse Payments. The City authorizes and appoints PAM to collect and receive all payments due or payable to the City for Debts placed with PAM. PAM has authority to receive payments in any form including but not limited to cash, check, money order, or electronic payment and has authority to endorse all such payments as may be required.
- 1.8. Authorization to Investigate. The City expressly authorizes PAM to perform investigative services related to ordinary debt collection activities.

2. Performance by PAM

- 2.1. Agreement to Collect. PAM agrees to provide debt collection services to the City in compliance with all applicable laws, regulations, licensing and bonding requirements.
- 2.2. Documentation of Accounts/Financial Reporting. PAM will provide monthly, detailed reports of collection activity related to Debts including without limitation; principal amount of Debt, amounts collected to date including any allowable fees, costs and interest, dispute information, requests for validation by debtor, agreements by the debtor regarding future payments, bankruptcy, death or legal disability of the debtor, amount of commission retained by PAM, amount remitted to the City and amount remitted to others under this Agreement.
- 2.3. Credit Reporting. PAM will report information regarding Debts in accordance with this Agreement to the following Consumer Reporting Agencies: Equifax, Experian and Trans Union. PAM agrees to comply with the Fair Credit Reporting Act (FCRA) and all applicable state and federal laws related to such reporting. PAM will comply with standards set by the American Collectors Association, Inc. (ACA), including the ACA Code of Ethics and the ACA Code of Operations.
- 2.4. Insurance and Bond Coverage. PAM will maintain at least the minimum level of insurance and bond coverage required by ACA or state law, whichever is greater, in all jurisdictions in which engaged in collection activity under this Agreement.
- 2.5. Trust Account. PAM warrants that it will maintain a trust account if required by state law while PAM is engaged in collection activity under this Agreement.
- 2.6. Methods and Compliance. PAM uses ordinary and reasonable collection efforts as permitted by law and will at all times comply with the Fair Debt Collection Practices Act (FDCPA), the Fair Credit Reporting Act (FCRA) and all applicable state, federal and local laws and regulations applicable to collections under this Agreement.

GOODS AND SERVICES AGREEMENT

3. Legal Process. The City reserves sole right and authority to place Debts in litigation, including Debts subject to a forwarding agreement. The City may authorize PAM in writing to retain an attorney and commence litigation on behalf of the City, subject to separate terms and conditions mutually agreed in writing between the Parties. At no time, nor in any case, does PAM accept any responsibility or liability for any expenses, fees, or damages or any costs or liability related to legal process or use of an attorney to collect Debts.
4. Cost and Fees
 - 4.1. Contingency Fee. The cost of collection services described in this Agreement is percentage-based contingent on Debts collected. A Debt placed for collection with PAM or with an attorney to obtain judgment or otherwise satisfy payment of the Debt is subject to the fee based on the amount actually collected (Contingency Fee) by PAM. The Contingency Fee is in addition to any and all other costs including but not limited to court costs, sheriff's fees, interest, late fees, investigatory fees, credit reporting fees or other costs incurred directly or indirectly by PAM in collection of amounts owed under this Agreement.
 - 4.2. Interest and Fees on Debts. The City hereby authorizes PAM to add interest, civil penalties, litigation and legal process fees, court costs, attorney fees and other such expenses relating to the collection of Debts as provided by law or debtor contract and to collect this amount from the debtor. Such amounts are considered part of the total original amount placed for collection.
 - 4.3. Remittance. Amounts due the City based on one (1) calendar month of collections will be remitted to the City Account by the fifteenth (15th) day of the following month. PAM will provide a report of collection activities to the City, up to and including the date of any expiration or termination of this Agreement, within thirty (30) calendar days of expiration or termination.
 - 4.4. NSF and Disputed Payments. In the event that any Debts reported to the City as paid are subsequently returned NSF or reversed as disputed, PAM will reverse the amount of such Debt payment and all fees taken on such payment from the current month's billing statement.
5. Authorization To Forward Accounts. PAM may forward any of the City's Debts to another collection agency if the debtor has moved out of the general business area of PAM, and such other collection agency shall have authority to exercise all ordinary and reasonable collection efforts as permitted by law, and shall remit any payments made to PAM less agreed commissions, and PAM shall then remit to the City less any agreed commissions.
6. Right To Withdraw Accounts or Termination. The City may request the return of any Debts not yet collected provided thirty (30) calendar days advance written notice (Notification Period). PAM agrees to return Debts not collected by the end of the Notification Period along with appropriate financial records of the Debts including amounts collected, commission retained, additional fees, interest and charges added, and a detailed statement of expenses incurred by PAM on behalf of the City. In the event of termination of this Schedule or the Agreement, the City will pay all amounts due under this Agreement on Debts that have been collected through the end of PAM's business day on the date of termination.
7. Assignment and Process. PAM will accept Debts in accordance with the business rules adopted by the City but shall not assume collection activities until the Judgment Notice.
8. Collection Letters. PAM will propose customized collection letters to the City for review, edit and approval. Collection letter types may include Notice of Assignment to Collection Agency, Demand for Payment, Pending DMV Hold, Pending Tax Offset (where applicable), or Pending Credit Bureau Placement.
9. Skip Tracing. PAM will provide skip trace services where required to locate debtors current address for all Debts.
10. DMV Information. PAM will verify DMV information, as required, and obtain vehicle registrations for Debts.
11. Customer Service. PAM will provide a toll-free Customer Service number listed on all correspondence for debtors to contact PAM for any reason.
12. Debtor Dispute Resolution. PAM will provide dispute resolution services, in accordance with business rules established by the City, to review debtor claims of non-liability and forward accounts to the City where PAM has determined a valid reason for dismissal. The City, at its sole discretion, will make final decisions on such matters and update the AutoCOLLECT System to reflect such decision.
13. Lockbox Remittance Processing. All PAM collection notices include a return remittance envelope addressed to PAM's remittance processing center. PAM will provide lockbox remittance processing of all payments and update the AutoCOLLECT System on a daily basis.

GOODS AND SERVICES AGREEMENT

SCHEDULE D – SUPPORT, WARRANTY AND RETURNS

- 1) Support - Applications. Software engineers will be available by telephone for support between 8:30 a.m. – 5:00 p.m. EST in support of PAM provided hardware, software and systems. Remote access to personal computers will be accomplished via LogMeIn. Change requests that modify the configuration or features of the system will be quoted separately and are not included.
- 2) Support - Hosted Systems. The following support is available where applicable PAM systems are in place.
 - a) Server Infrastructure. PAM will monitor and maintain all application servers, database servers, authentication services, virtualized machines, monitoring servers, backup servers, network equipment (including switches, routers, firewalls, data lines) and other necessary infrastructure components. PAM will install Microsoft system updates, including window patches. PAM will tune and maintain database systems.
 - b) System Backups. Online Oracle Database backups to tape drive will occur nightly. Offline Oracle Database backups to tape will occur weekly. Application server backups to tape drive will occur nightly. All tapes will be stored in secure facility off-site.
 - c) Software Maintenance. PAM will install all necessary software updates on the Hosted System infrastructure.
 - d) City Network Hardware and Connectivity. For PAM provided and maintained network connections, PAM will remotely monitor firewall, routers, and data lines to ensure connectivity. In the event of outage, PAM will assist with, but is not responsible for the restoration of service.
- 3) Warranty and Returns. PAM expressly warrants parking products against defects in materials and workmanship for twelve (12) months from date of installation or fourteen (14) months from the date of delivery to City, whichever is sooner (Warranty Period).
- 4) Included in this limited warranty are electronic modules, replacements parts, certain software fixes and upgrades, and accessories. This warranty is expressly limited to repair or replacement of the defective part or parts at PAM's sole discretion. PAM's sole obligation and City's sole and exclusive remedy related to defective goods and this limited warranty is repair or replacement of defective goods, at PAM's sole discretion, during the Warranty Period. This limited warranty is restricted to the performance defined within the relevant PAM Product Specifications.
- 5) This limited warranty applies to goods determined to be defective in material or workmanship under normal use and service. The following Exclusions apply to this limited warranty;
 - a) Parts determined to be abused, misused, incorrectly handled, improperly maintained, or vandalized
 - b) Consumables and batteries, unless proven to be defective upon supply
 - c) Unauthorized, imitation or other non-PAM parts, accessories, or alterations
 - d) Goods affected by environmental conditions or acts of God
 - e) Software upgrades or changes due to changes in City systems, software, hardware or other operating environment changes
 - f) Change requests that modify the configuration or features of the system
- 6) Hardware is moisture resistant however, not designed to be completely moisture proof or waterproof. All parts being returned under this limited warranty for repair will be managed through the National Repair Center (DNRC) located in Carlsbad, California. To initiate a repair under this limited warranty, City shall:
 - a) Call the DNRC at **(760) 945-9893** between 8:30 a.m. to 5:00 p.m. EST Monday through Friday.
 - b) A customer support representative will review the issue and provide further instruction that may include a Return Merchandise Authorization (RMA) number.
 - c) City is responsible for proper packaging and shipment costs to the DNRC. The RMA number must be clearly printed on the outside of any packaging.
 - d) Parts shipped without contacting the DNRC in advance will be refused.
 - e) Shipments without an RMA number clearly printed on the outside of packaging may be delayed in processing or refused.
 - f) PAM will pay shipping charges to return goods to City after repair or replacement.

THIS LIMITED WARRANTY IS THE EXCLUSIVE AND SOLE WARRANTY PROVIDED BY PAM AND EXCLUDES ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PAM IS NOT RESPONSIBLE FOR ANY GENERAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSS OF USE OR LOSS OF PROFITS.

GOODS AND SERVICES AGREEMENT

ATTACHMENT 1 – INSURANCE CERTIFICATES

ORDINANCE NO.: 11 - 2013

OF

OCTOBER 28, 2013

AN ORDINANCE RESCINDING SECTION 288-35.1 ENTITLED "PARKING PERMITS" AND AMENDING SECTION 288-85 ENTITLED "SCHEDULE XXVII: CITY PARKING LOTS AND PARKING GARAGES - PARKING PERMIT FEES" OF CHAPTER 288 ENTITLED "VEHICLES AND TRAFFIC" OF THE CODE OF THE CITY OF NEWBURGH

BE IT ORDAINED by the City Council of the City of Newburgh that:

Section 1. Section 288-35.1 entitled "Parking Permits" of Chapter 288 entitled "Vehicles and Traffic" of the Code of the City of Newburgh be and hereby is rescinded in its entirety.

Section 2. Section 288-85 entitled "Schedule XXVII: City Parking Lots And Parking Garages - Parking Permit Fees" of Chapter 288 entitled "Vehicles and Traffic." of the Code of the City of Newburgh be and hereby is amended as follows:

§ 288-85 Schedule XXVII: City Parking Lots and Parking Garages - Parking Permit Fees.

Whenever the City Manager shall, pursuant to the authority delegated to him by § **288-35** of this chapter, have designated all or some of the spaces in parking lots owned or operated by the City of Newburgh as reserved for vehicles displaying a valid parking permit for said parking lot issued by the City of Newburgh, the fee for the purchase of said parking permit shall be as established herein; and no person shall park or stand a vehicle in such space without displaying a valid parking permit issued by the City of Newburgh and without having paid the fee set forth herein. All permits designated in this section shall be issued by the Parking Violations Bureau.

Location of Parking Lot	<u>Day Permit</u> <u>6am to 6pm</u> Monthly Fee
Ann Street (between Liberty Street and South Johnson Street)	\$20 <u>50</u>
Ann Street (between William Street and Mill Street)	\$20 <u>50</u>
Broadway (at Grand Street)	\$35 <u>50</u>
Chambers Street	\$20 <u>50</u>
Delano-Hitch Park	\$20 <u>50</u>
Front Street (east side)	\$20 <u>50</u>
Front Street (west side)	\$20 <u>50</u>
Grand Street (Courthouse Square)	\$35
Johnston Street	\$20
Liberty Street	\$20
Public Safety Building	\$20
Van Ness Street	\$20 <u>50</u>
Ward Brothers Park	\$20

Washington Street Boat Launch
Chapter 163, Fees

Daily or seasonal permit as set forth in

Water Street

\$20 50

West End

\$20 50

Section 3. This ordinance shall take effect immediately.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

ORDINANCE NO.: 12 - 2013

OF

OCTOBER 28, 2013

AN ORDINANCE AMENDING SECTION 297-22 ENTITLED "TOWING OF VEHICLES BY CITY" OF CHAPTER 297 ENTITLED "WRECKERS AND TOWERS" OF THE CODE OF THE CITY OF NEWBURGH

BE IT ORDAINED by the City Council of the City of Newburgh that:

Section 1. Section 297-22 entitled "Towing of Vehicles by City" of Chapter 297 entitled "Wreckers and Towers" of the Code of the City of Newburgh be and hereby is amended as follows:

§ 297-22. Towing of vehicles by City.

C. Boot and Tow Program for Scofflaws

- (1) Any unattended vehicle found parked upon a street or on any City-owned property or property under the jurisdiction or control of the City against which there are three or more outstanding or otherwise unsettled parking violation summonses within an eighteen-month period for which judgments have been issued may, by or under the direction of a police officer, parking enforcement officer or other designee of the Director of the Parking Violations Bureau, either by towing or otherwise, be removed or conveyed to and impounded in any place designated by the Director of Parking Violations or immobilized in such a manner as to prevent its operation, except that no such vehicle shall be immobilized by any means other than by use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place.
- (2) It shall be the duty of the police officer, parking enforcement officer or other designee of the Director of the Parking Violations Bureau, removing or immobilizing such motor vehicle or under whose direction such motor vehicle is removed or immobilized to inform as soon as practicable the Director of Parking Violations, who shall in turn inform by first class mail the owner of the impounded or immobilized vehicle of the nature and circumstances of the prior unsettled parking violations summonses, for which or on account of which such vehicle was impounded or immobilized. In any case

involving immobilization of a vehicle pursuant to this subsection, such police officer, parking enforcement officer or other designee of the Director of the Parking Violations Bureau, shall cause to be placed on such vehicle, in a conspicuous manner, a notice sufficient to warn any individual to the effect that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle.

- (3) The owner or person entitled to possession of such vehicle may secure the release of the vehicle by complying with the rules and regulations of the Parking Violations Bureau concerning all outstanding summonses and judgments against said vehicle and by payment of the sum as outlined in Chapter 163, Fees, for the removal of the immobilization device or mechanism.

Section 2. This ordinance shall take effect immediately.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

ORDINANCE NO.: 13 - 2013

OF

OCTOBER 28, 2013

AN ORDINANCE AMENDING CHAPTER 163 ENTITLED "FEES" OF THE CODE OF THE CITY OF NEWBURGH TO ADD FEES FOR PARKING VIOLATIONS BUREAU TRANSCRIPTS AND APPEALS AND TO ADD TOWING AND BOOT FEES

BE IT ORDAINED by the City Council of the City of Newburgh that:

Section 1. Chapter 163 entitled "Fees" of the Code of the City of Newburgh be and hereby is amended as follows:

Code Section	Type of Fee	Amount
Chapter 70, Parking Violations Bureau		
<u>§ 70-10 Hearings</u>	<u>Transcript Fee</u>	<u>\$10</u>
<u>§ 70-12 Appeals</u>	<u>Appeal Application Fee</u>	<u>\$25</u>
Chapter 297, Wreckers and Towers		
§ 297-3	Towing storage and cleanup rates: Initial pickup charge for towing or road service:	
	Between 8:00 a.m. and 5:00 p.m.	\$100 <u>\$125</u>
	Between 5:00 p.m. and 8:00 a.m.	<u>\$125</u> <u>\$150</u>
	Anytime during snow emergency	\$150 <u>\$175</u>
	Winching Charge	\$85 <u>100</u> per
hour		
<u>§ 297-22</u>	<u>Installation of immobilization device</u>	<u>\$75</u>
	<u>Removal of immobilization device</u>	<u>\$25</u>
	<u>Removal of Scofflaw Administrative Fee</u>	<u>\$10</u>

| **Section 2.** This ordinance shall take effect immediately.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

**RESOLUTION NO.: 218 - 2013
OF
OCTOBER 28, 2013**

**A RESOLUTION REQUESTING AN EXEMPTION FROM COUNTY
TAXES FOR THE CITY'S RESERVOIR AND FILTER PLANT
PROPERTIES FOR THE YEAR 2015**

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

The requested exemption would include exemption from all taxation, special ad valorem levies and special assessments through December 31, 2015, so long as the subject premises are used for the aforesaid purposes.

The specific properties involved are as follows:

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

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO.: 219 - 2013

OF

OCTOBER 28, 2013

**A RESOLUTION AUTHORIZING THE CITY CLERK TO EXECUTE A
LICENSING ISSUING AGENT AGREEMENT WITH THE NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND
DESIGNATING THE DEPTUTY CITY CLERK AS ASSISTANT LICENSING
ISSUING AGENT**

WHEREAS, under Section 11-0713 of the New York State Environmental Conservation Law, the New York State Department of Environmental Conservation is authorized to appoint municipal clerks as agents to issue hunting and fishing licenses in New York State; and

WHEREAS, in order for the City Clerk to continue to issue hunting and fishing licenses, a Licensing Issuing Agent Agreement with the New York State Department of Environmental Conservation is required; and

WHEREAS, the Licensing Issuing Agent Agreement permits the City Clerk to appoint an Assistant Licensing Agent to be trained and authorized to issue said licenses; and

WHEREAS, the City Council of the City of Newburgh finds appropriate and in the best interests of the City of Newburgh to authorize the City Clerk to execute the Licensing Issuing Agent Agreement and to appoint a Deputy City Clerk to serve as the Assistant Licensing Agent;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh hereby authorizes the City Clerk to execute the Licensing Issuing Agent Agreement, annexed hereto and made part hereof, with New York State Department of Environmental Conservation and to appoint a Deputy City Clerk to serve as the Assistant Licensing Issuing Agent for the purpose of issuing hunting and fishing licenses in New York State.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

219-13

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
LICENSE ISSUING AGENT AGREEMENT

(Do not alter this Agreement. If information is incorrect, please call the New York State Department of Environmental Conservation at 518-402-9365.)

This Agreement entered into between the New York State Department of Environmental Conservation (hereinafter referred to as the "Department"), with offices at 625 Broadway, Albany, New York 12233, and _____,

as the owner municipal clerk manager of _____

Business/Municipality Name Street Address

City/Town/Village State Zip Code

(hereinafter collectively referred to as the "License Issuing Agent")

WITNESSETH:

WHEREAS, the Department is authorized by § 11-0713 of the Environmental Conservation Law and applicable rules and regulations to appoint agents to issue licenses for the privilege of hunting and fishing in New York State; and

WHEREAS, the License Issuing Agent has applied to the Department for appointment as such a License Issuing Agent; and

WHEREAS, the Department has determined that the License Issuing Agent is qualified to be appointed as a license issuing agent.

NOW THEREFORE, the parties hereto agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meaning provided herein:

License Issuing Agent – shall mean both the *License Issuing Agent* and the *License Issuing Officer* as provided in 6 NYCRR § 177.1(f) and (g) of the Department regulations and shall also mean the duly appointed owner, municipal clerk, or manager set forth above.

Assistant License Issuing Agent – shall mean the individual appointed by the Licensing Issuing Agent to receive Department sponsored training for the purpose of issuing sportsman licenses and to be the point of contact for any Department inquires.

Approved location – shall mean the business' or municipality's address as set forth in the beginning of this Agreement.

2. APPOINTMENT

A. The Department hereby appoints the License Issuing Agent and their duly appointed Assistant License Issuing Agent (designed below) to be an agent issuing hunting, trapping, and fishing licenses at the approved location.

B. The License Issuing Agent hereby appoints _____,
Name
_____, as the Assistant License Issuing Agent.
Title

(See paragraph [11. F] herein for information regarding changes in appointment of the Assistant License Issuing Agent.)

3. DEPARTMENT REPRESENTATIONS

The Department hereby agrees that it will:

A. Provide the License Issuing Agent with a license printer (and necessary supplies) at the approved location for the sale and reporting of hunting and fishing licenses and provide necessary support for the printer.

B. Pay a commission to the License Issuing Agent for each license sold as prescribed in Department laws, rules and regulations.

C. Provide appropriate training and training materials to the Assistant License Issuing Agent, including a toll free telephone "help desk" service to answer questions and assist with problems.

D. Provide informational materials for use at the approved location for the License Issuing Agent and their authorized employees to distribute to hunters, anglers, etc., regarding regulatory requirements for all authorized licenses issued.

4. AGENT REPRESENTATIONS

The Agent hereby agrees that it will:

A. Provide authorization attached hereto as Attachment "A" for the Department to access a bank account for electronic fund transfers to pay for all licenses sold. Fund transfers shall be scheduled on a regular basis as determined by the Department.

B. Provide reasonable and necessary security to protect equipment and supplies from damage and unauthorized use.

C. Ensure that all Department license issuing equipment is maintained in good working condition and returned to the Department when license sales are no longer provided at the approved location.

D. Pay all amounts due to the Department. Failure to maintain an adequate balance in the License Issuing Agent's account may result in immediate termination of this Agreement.

E. The License Issuing Agent must provide a compatible computer system including a plain paper printer and access to the internet at no charge to the Department.

F. The License Issuing Agent agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it in a court of competent jurisdiction, to the extent such loss is attributable to a negligent omission or tortious act of the License Issuing Agent, its agents or employees, in the performance of this Agreement.

G. The License Issuing Agent is solely responsible for the supervision and direction of the performance of this Agreement by the Assistant License Issuing Agent and other authorized license issuing employees other than as specifically provided herein.

5. AGENT RESPONSIBILITY

A. General Responsibility: The License Issuing Agent shall at all times during the Agreement term remain responsible. The License Issuing Agent agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

B. Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the License Issuing Agent. In the event of such suspension, the License Issuing Agent will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the License Issuing Agent must comply with the terms of the suspension order. Agreement activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.

6. LICENSE ISSUING CONDITIONS

A. All licenses authorized to be sold pursuant to this Agreement may only be sold by the Assistant License Issuing Agent or authorized employees of the License Issuing Agent at the approved location set forth in this Agreement.

B. All employees authorized to issue licenses by the License Issuing Agent pursuant to paragraph "A" of this section, shall be appropriately trained in the use of the license issuing system by the Assistant License Issuing Agent prior to using the issuance system.

C. The Assistant License Issuing Agent must receive recurring training sponsored by the Department at least once every three years or sooner as circumstances warrant as determined by the Department.

D. The License Issuing Agent and its employees who are authorized to issue licenses pursuant to this Agreement must abide by New York State Regulations 6 NYCRR Part 177 (www.dec.ny.gov/regs/3936.html) and 6 NYCRR Part 183 (www.dec.ny.gov/regs/3931.html).

E. All personal data provided by customers shall be kept confidential to the extent required by Law.

F. All documents considered returnable documents as well as all voided licenses for which credit is requested must be returned to the Department within one month of the transaction.

G. All funds received from the sale of licenses, less the commission fee established by the Department, will be held in trust for the Department. Monies collected from the sale of licenses are Department funds and any other use of such funds is prohibited. The License Issuing Agent accepts the responsibility and duties of trustee for all funds collected for the benefit of the Department under this Agreement.

H. No license may be sold for a fee in excess of or less than the amount established by the Department.

I. The complete catalog of sportsman licenses must be available for sale at the License Issuing Agent's approved location as designated in this Agreement.

7. USE OF EQUIPMENT AND SUPPLIES

A. Supplies and equipment assigned to the License Issuing Agent for the printing of licenses are to be used for that purpose only, unless prior approval for such use is provided by the Department. Equipment is not transferable to other license issuing agent locations.

B. In the event that defective equipment is replaced, the License Issuing Agent shall return the defective equipment immediately to the specified repair center. The License Issuing Agent shall pay for any such equipment not returned, or equipment that shows obvious abuse. Failure to remit payment for abused or unreturned equipment may result in the immediate termination of this Agreement.

8. CHANGE IN OWNERSHIP

In the event of a change in ownership of the License Issuing Agent's business, the Department must be notified 30 days in advance of any such change, and this Agreement becomes immediately terminated at the time of such change in ownership. At the time of termination, all Department-provided licensing equipment must be returned to the Department or the

Department's representative. This License Issuing Agent's appointment is not transferable and shall apply only to the License Issuing Agent's appointment to sell hunting and fishing licenses.

9. CHANGE IN MUNICIPAL CLERK

In the event of a change in municipal clerk from that who entered into this Agreement, the Department must be notified within 30 days of such change and this Agreement will become void at the time of such change. To avoid a disruption in service, a new Agreement should be submitted in advance of such change signed by the new municipal clerk. If the municipality intends to submit a new Agreement, Department-provided equipment does not need to be returned.

10. COMPLIANCE INSPECTIONS

The Department reserves the right to inspect the approved location for the purpose of determining compliance with this Agreement.

11. TERMINATION

In addition to any termination event appearing elsewhere in this Agreement, or provided in the applicable Department regulations, the following shall apply:

A. This Agreement may be terminated for cause if the Department determines that any false statements or omissions were made on the License Issuing Agent's application.

B. This Agreement may be terminated for cause for failure to comply with the terms of this Agreement at any or all approved locations at any time by the Department.

C. Either party may terminate this Agreement for convenience by 15 days written notice to the other party.

D. In the event of termination of this Agreement, the License Issuing Agent shall pay for all licenses sold and not previously paid for and return all equipment and supplies to the Department within 30 days of such termination.

E. Termination for Non-Responsibility: Upon written notice to the License Issuing Agent, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Agreement may be terminated by the Commissioner or his or her designee at the License Issuing Agent's expense where the License Issuing Agent is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

F. In the event of a change in the appointment of the Assistant License Issuing Agent, the License Issuing Agent shall notify the Department of such change within 15 business days by submitting to the Department a completed revised License Issuing Agent Application

Form attached hereto as Attachment "B," which shall provide, among other things, the name and title of the newly appointed Assistant Licensing Issuing Agent. In the Department's sole discretion, this agreement may be suspended or terminated in the event the Department is not notified of any change in appointment of the Assistant License Issuing Agent as provided herein.

12. TERM

This Agreement shall remain in effect from the date of execution until such termination.

13. APPLICABLE LAWS

A. This Agreement shall be governed by the laws of the State of New York.

B. All licenses shall be issued in accordance with the provisions of the New York Codes, Rules and Regulations of the State of New York (<http://www.dec.ny.gov/regs/2494.html>) and New York State Law and the policies and procedures of the Department.

14. TOTAL AGREEMENT

This Agreement together with any laws, documents and instruments herein referenced, shall constitute the entire agreement and any previous communication pertaining to this Agreement is hereby superseded.

15. CONTRACT AMENDMENT

Any agreement revisions, including payment adjustments or time extensions, shall be made by a written amendment to the agreement, signed by both parties.

Signature _____
License Issuing Agent
(notarization required below)

Date: _____

LICENSE ISSUING AGENT ACKNOWLEDGMENT

State of _____)
)s.s.:
County of _____)

On the ____ day of _____, in the year _____, before me, the undersigned, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her /their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date Notary Expires

Notary Public

Signature _____

DEC Representative

Date: _____

NOTE: A faxed copy of this agreement and the associated application will not be accepted.

Completed applications and agreements in their original form should be mailed to:

Attn: Revenue and Accounting Unit
New York State Department of Environmental Conservation
625 Broadway, 10th Floor
Albany, New York 12233-4900

Attachment A

New York State Department of Environmental Conservation
Division of Management & Budget Services
Bureau of Revenue Management -10th Floor
625 Broadway, Albany, New York 12233-5012
Phone: (518) 402-9365 • FAX: (518) 402-9023
Website: www.dec.state.ny.us

Please complete, review and sign this form. Attach a voided check or a statement from your bank that includes the routing number and account number for the account from which the ACH debits will be drawn and mail this items to the address above.

New York State Department of Environmental Conservation Authorization Agreement for Direct Payments (ACH Debits) relative to the Department's automated sporting license system.

Agent/Officer Name: _____
Business Address: _____
City: _____
State: _____
ZIP: _____
Telephone: _____

I hereby authorize the New York State Department of Environmental Conservation, hereinafter called DEPARTMENT, to initiate debit entries to my account indicated below at the financial institution named below, hereinafter called DEPOSITORY, and to debit the same account. I acknowledge that the origination of ACH Transactions to my account must comply with the provisions of U.S. law.

Branch Name: _____
Address: _____
City: _____
State: _____
ZIP Code: _____
Contact: _____
Telephone: _____
Routing Number: _____
Account Number: _____
Account Name _____
Account Type: Checking Savings

This authorization is to remain in full force and effect until DEPARTMENT has received written notification from me of its termination in such manner as to afford DEPARTMENT and DEPOSITORY a reasonable opportunity to act on it.

Signature: _____

Date: _____

NOTE: ALL WRITTEN DEBIT AUTHORIZATIONS MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 LICENSE ISSUING AGENT APPLICATION
 ATTACHMENT "B"



LICENSE ISSUING AGENT PERSONAL INFORMATION		
FIRST, MIDDLE INITIAL, LAST NAME:		
HOME ADDRESS:		
STREET/PO BOX:		
CITY:	STATE:	ZIP CODE:
HOME TELEPHONE NUMBER: _____ WORK TELEPHONE NUMBER: _____		
HAS APPLICANT SOLD NEW YORK STATE HUNTING AND FISHING LICENSES PREVIOUSLY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, PLEASE PROVIDE AGENT NUMBER: _____		
HAVE YOU EVER BEEN DENIED A BOND OR BEEN THE DEFENDANT IN COURT PROCEEDINGS INVOLVING THE NONPAYMENT OF DEBTS? <input type="checkbox"/> YES <input type="checkbox"/> NO		
HAVE YOU EVER BEEN CONVICTED OF A FELONY? <input type="checkbox"/> YES <input type="checkbox"/> NO		
IS THE AGENT 18 YEARS OF AGE OR OLDER? <input type="checkbox"/> YES <input type="checkbox"/> NO		
POSITION OF APPLICANT: <input type="checkbox"/> OWNER <input type="checkbox"/> MUNICIPAL CLERK <input type="checkbox"/> MANAGER		
BUSINESS INFORMATION		
LEGAL NAME OF BUSINESS OR MUNICIPALITY:		
FEDERAL EMPLOYER IDENTIFICATION NUMBER:		
TYPE OF BUSINESS: <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> SOLE PROPRIETORSHIP <input type="checkbox"/> CORPORATION <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> LIMITED PARTNERSHIP		
BUSINESS MAILING ADDRESS:		
STREET/PO BOX:		
CITY:	STATE:	ZIP CODE:
BUSINESS SHIPPING ADDRESS (If Different From Above)		
STREET ADDRESS		
CITY	STATE:	ZIP CODE:
BUSINESS TELEPHONE NUMBER:		BUSINESS FAX NUMBER:
BUSINESS E-MAIL ADDRESS:		
HAS THIS BUSINESS LOCATION SOLD NEW YORK STATE HUNTING AND FISHING LICENSES PREVIOUSLY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, PLEASE PROVIDE AGENT NUMBER: _____		

RESOLUTION NO.: 220 2013

OF

OCTOBER 28, 2013

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

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

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

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

NOW THEREFORE, BE IT RESOLVED:

THIS COUNCIL HEREBY DECLARES a city-wide curfew for minors from 9:00 P.M. until 6:00 A.M. each day, starting at 9:00 p.m. on Wednesday, October 30, 2013, and ending at 6:00 a.m. on Friday, November 1, 2013; and

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

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

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO. 221-2013

OF

OCTOBER 28, 2013

A RESOLUTION AUTHORIZING A REQUEST TO AMEND THE ENVIRONMENTAL RESTORATION PROGRAM STATE ASSISTANCE CONTRACT (SAC) IN CONNECTION WITH THE INVESTIGATION, INTERIM REMEDIAL MEASURES AND PREPARATION OF REMEDIAL ALTERNATIVES FOR CITY OWNED PROPERTY LOCATED AT 7-11 JOHNES STREET IN AN AMOUNT OF \$99,500.00

WHEREAS, the City of Newburgh has entered into a State Assistance Contract (SAC) with the New York State Department of Environmental Conservation (the "DEC") to address environmental concerns at 7-11 Johnes Street, and

WHEREAS, the nature and extent of the problems at the site were complicated by conditions unknown to the City of Newburgh, and

WHEREAS, the Project has incurred or will incur an additional \$99,500.00 in costs beyond the limit of the current SAC Agreement Limit in order to complete the required scope of work, and

WHEREAS, it is now necessary to authorize the City Manager to request a SAC Amendment with the DEC to cover said costs, of which the City share will be \$60,000.00 and the DEC share will be \$39,500.00;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to request a SAC Amendment to cover additional costs to the contract for the City-owned property located at 7-11 Johnes Street at a cost not to exceed \$99,500.00.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO. 222 -2013

OF

OCTOBER 28, 2013

A RESOLUTION AUTHORIZING A REQUEST TO AMEND THE ENVIRONMENTAL RESTORATION PROGRAM STATE ASSISTANCE CONTRACT (SAC) IN CONNECTION WITH THE INVESTIGATION, INTERIM REMEDIAL MEASURES AND PREPARATION OF REMEDIAL ALTERNATIVES FOR CITY OWNED PROPERTY LOCATED AT 86 WISNER AVENUE IN AN AMOUNT OF \$38,000.00

WHEREAS, the City of Newburgh has entered into a State Assistance Contract (SAC) with the New York State Department of Environmental Conservation (the "DEC") to address environmental concerns at 86 Wisner Avenue, and

WHEREAS, the nature and extent of the problems at the site were complicated by conditions unknown to the City of Newburgh, and

WHEREAS, the Project has incurred or will incur an additional \$38,000.00 in costs beyond the limit of the current SAC Agreement Limit in order to complete the required scope of work, and

WHEREAS, it is now necessary to authorize the City Manager to request a SAC Amendment with the DEC to cover said costs, of which the City share will be \$9,000.00 and the DEC share will be \$29,000.00;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to request a SAC Amendment to cover additional costs to the contract for the City-owned property located at 86 Wisner Avenue at a cost not to exceed \$38,000.00

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO.: 223 - 2013

OF

OCTOBER 28, 2013

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE A CONTRACT AMENDMENT WITH BARTON & LOGUIDICE, P.C. FOR PROFESSIONAL ENGINEERING SERVICES FOR THE EMERGENCY RECONSTRUCTION OF THE WEST TRUNK SEWER LINE AND RELATED IMPROVEMENTS AT AN ADDITIONAL COST OF ONE HUNDRED EIGHTY-FIVE THOUSAND DOLLARS

WHEREAS, by Resolution No. 139-2013 of July 17, 2013, this Council authorized the Interim City Manager to execute an agreement for professional engineering services with Barton & Loguidice, P.C. for the scope of work outlined in a proposal dated June 28, 2013 in an amount not to exceed \$690,000.00 for the emergency reconstruction of the West Sewer Trunk Line and related repairs and for the stabilization of the Quassaick Creek Corridor (the Project); and

WHEREAS, the June 28, 2013 Barton & Loguidice proposal included a supplemental work item related to the proposed removal of the Holden Dam which could be authorized separately at a later date if the such work was determined to be necessary for the Quassaick Creek Corridor stream stabilization portion of the Project; and

WHEREAS, engineering surveys, investigations and assessments to date indicate that the including the partial removal of the Holden Dam, excavating the stream channel to create a broader flood plain and relocating the Quassaick Creek away from the West Trunk Sewer right of way is necessary for the long-term success of the completed Project; and

WHEREAS, including the partial removal of the Holden Dam in the overall Project will require an amendment to the agreement for professional engineering services with Barton & Loguidice and this Council has determined that entering into said amendment is in the best interests of the City of Newburgh; and

WHEREAS, funding for such project shall be derived from HG1.8130.0400.8200.2013; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, that the Interim City Manager is hereby authorized to execute an amendment to the agreement for professional engineering services with Barton & Loguidice, P.C. for the additional scope of work outlined in the proposal dated June 28, 2013 necessary for the removal of the Holden Dam and related stream stabilization work in an amount not to exceed \$185,000.00, with other provisions as Corporation Counsel may require, in connection with the West Sewer Trunk Line Repair and Quassaick Creek Corridor Stabilization Project.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO.: 224 - 13

OF

OCTOBER 28, 2013

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL
PROPERTY KNOWN AS 127 MONTGOMERY STREET (SECTION 19,
BLOCK 1, LOT 8) AT PRIVATE SALE TO TYLER ROEBUCK FOR THE
AMOUNT OF \$20,000.00**

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

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

WHEREAS, the City of Newburgh desires to sell 127 Montgomery Street, being more accurately described as Section 19, Block 1, Lot 8 on the official tax map of the City of Newburgh; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the Interim City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before January 27, 2014, being ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
127 Montgomery Street	19 - 1 - 8	Tyler Roebuck	\$20,000.00

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

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

Terms and Conditions Sale

127 Montgomery Street, City of Newburgh (19-1-8)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; (e) 2011-2012, 2012-2013 and the first installment of the 2013-2014 school taxes, 2012 and 2013 County taxes and 2013 City real property taxes, water rents and assessments, and sewer rents and assessments and any other applicable charges (including, but not limited to, omitted and pro rata taxes, demolition charges, interest and penalties); and (f) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The property is sold subject to unpaid school taxes for the tax years of 2011-2012, 2012-2013 and the first installment of the 2013-2014 school taxes, unpaid 2012 and 2013 County real property taxes and unpaid 2013 City real property taxes. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2011-2012, 2012-2013 and the first installment of the tax year 2013-2014, and subsequent levies up to the date of the closing. Upon the closing, the property shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.

6. The property is sold subject to an owner-occupancy restriction. The purchaser has agreed to purchase the property subject to the five (5) year owner occupancy restriction shall, within 18 months of the delivery of the deed, establish his domicile and principal residence at said premises and maintain his domicile and principal residence at said premises for a period of at least five (5) years thereafter, provided that within said five (5) year period, the purchaser may convey said premises to another who shall also maintain their domicile and principal residence at said premises for said period. This shall be set forth as a restrictive covenant in the deed, subject upon its breach, to a right of re-entry in favor of the City of Newburgh. This shall be in addition to all other provisions, covenants and conditions set forth in the Terms of Sale.
7. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provisions of law applicable thereto and it is the sole responsibility of the purchaser bidder to redevelop such parcel so designated in accordance with same
8. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
9. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Bidder acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Bidder also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before January 27, 2014. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
12. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchasers agree that they shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
13. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor

of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.

14. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
15. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
16. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
17. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
18. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 225 - 2013

OF

OCTOBER 28, 2013

A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF MAURICIO RODRIGUEZ AGAINST THE CITY OF NEWBURGH IN THE AMOUNT OF FOUR THOUSAND NINETY-FIVE AND 51/100 DOLLARS

WHEREAS, Mauricio Rodriguez brought a claim against the City of Newburgh; and

WHEREAS, the parties have reached an agreement for the payment of the settlement of the claim in the amount of Four Thousand Ninety-Five and 51/100 (\$4,095.51) Dollars in exchange for a release to resolve all claims among them; and

WHEREAS, such funds shall be secured by 2013 "M" Funds, Account M.1930.0400 Judgments & Claims; 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 parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorney is hereby authorized to settle the claim of Mauricio Rodriguez in the total amount of Four Thousand Ninety-Five and 51/100 (\$4,095.51) Dollars, and that Interim City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

RESOLUTION NO.: 226 - 2013

OF

OCTOBER 28, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO EXECUTE A RENEWAL AGREEMENT WITH SEVERN-TRENT
ENVIRONMENTAL SERVICES, INC. FOR THE OPERATION,
MAINTENANCE AND MANAGEMENT OF
THE CITY WASTE WATER TREATMENT PLANT**

WHEREAS, the City of Newburgh owns and operates a waste water treatment plant ("WWTP") on behalf of the citizens of the City of Newburgh under and according to the laws, rules and regulations including permit conditions of all federal, state and other agencies and authorities with jurisdiction thereover; and

WHEREAS, under an Agreement dated August 1, 2003, extended in September 2005 and further extended in January 2009, the City has retained the services of Severn-Trent Environmental Services, Inc. to operate, maintain and manage the WWTP; and

WHEREAS, Severn-Trent has operated the WWTP professionally and effectively and in compliance with all applicable laws, rules, regulations and conditions, and in the best interests of the City of Newburgh; and

WHEREAS, by the terms of such Agreement, it is now appropriate and necessary to revise and renew such Agreement to continue to retain the services of Severn-Trent;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to execute on behalf of the City of Newburgh an Amended and Restated Agreement by and between the City of Newburgh and Severn-Trent Environmental Services, Inc. retaining said firm as operator of the City waste water treatment plant on the terms and in substantially the form attached hereto, with such other terms and conditions as Counsel and the City Comptroller may require same as being in conformity with law and in the best interests of the City of Newburgh.

Councilman Brown asked what is the term of this renewal?

Interim City Manager, James Slaughter, responded that it is for five years.

Councilman Brown said that they need to put some thought into this. He feels that five years is way too long without putting out an RFP to see what other vendors may be out there who could do it for less. Wastewater is a very lucrative business if it is done correctly.

Craig Marti, City Engineer, said that the current contract for Severn Trent expires this year and this is a five year contract. In light of new equipment and new processes, after two years we will be re-evaluating the cost savings that the new equipment is bringing to the process and we will have an opportunity to re-evaluate the cost of the contract. He understands that there is a desire to evaluate having the services done in-house so we can certainly do an analysis of what that will bring us but at this time we are on a time constraint and there is no time to do an RFP now that we have negotiated an extension with Severn Trent. They first desired a ten year contract given their successful performance over the past several years but we cut that back to five years with the re-evaluation after two. We do need to approve an extension so that our contract does not expire and we can then go back to them to re-negotiate.

Councilman Brown said that we still have a couple of months to figure that out. He wouldn't have a problem with a three year extension with an RFP going out in the third year to determine whether we want to continue with Severn Trent, do in-house or have a different vendor. He thinks that three years is a fair amount of time to get all of that done.

Craig Marti, City Engineer said that is certainly at the discretion of the City Council as to whether it is approved as written or with amendments.

Councilwoman Angelo said that she has to put in a plug for Severn Trent because they have been here since 2003 and we have had no complaints about odors where before them we did.

Councilman Brown agreed that Severn Trent does an excellent job but it has to come to a point to see if it is more beneficial for us to do it ourselves or is there another vendor out there that can do it for less. He thinks that they need to look at that and that it is a fair process. The new equipment will allow this Plant to operate more efficiently which reduces the cost of the operation so if that reduction in cost is being pocketed by Severn Trent and not by the

City then we should be benefitting from that. He feels that three years is a viable plan. It gives us an opportunity to take a look at ourselves and somebody else and to get an idea of what the equipment is going to do for us. We would then be in a position to do an RFP, do it ourselves or allow Severn Trent to continue for the next ten years. He said that he does not have a problem with Severn Trent he has a problem with not knowing.

Mayor Kennedy said that after the first two years there is going to be an evaluation of the efficiency of this new equipment. If there is a cost savings, it is to be passed on to the City.

Craig Marti, Engineer, responded that is correct. The way that the contract is written the cost savings that evolve throughout the operation of the Plant are shared with Severn Trent through energy savings and the like on a normal basis. Since we have a significant change in the process and capital improvement the clause we inserted into the contract allows us to take another look at the total operational costs and annual fee for Severn Trent. The energy savings and sludge disposal costs are shared as we progress even within the first two years. If we get a reduction in the number of tractor trailers full of sludge that ultimately get dumped, we will share in the decrease as we move forward in the next two years. We will be able to evaluate at the end of that two year period and evaluate Severn Trent's annual fee for the final three years of the contract. There is shared savings incentive for them to operate the Plant more efficiently as it stands and after the first two years it gives us a chance to evaluate that savings. They felt this was the fairest way to shorten the time frame.

Mayor Kennedy said that they have an added incentive to operate the Plant more economically as well as we do and generally speaking those need to be longer term contracts. She said that she understands Council Brown's ideas of having the competitive bids but at this time she is inclined to say that we need to go with the five year contract. In that time, however, we need to monitor this very closely and make sure how this shared opportunity goes. She noted that it isn't always the cheapest one that gives you the best service. Money and the quality of service both have to be evaluated. She is inclined to go with the five year contract given that they have done a really good job up to this point.

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

Ayes - Councilwoman Angelo, Councilwoman Lee, Mayor Kennedy - 3

Nays - Councilman Brown - 1

ADOPTED

226-13

Amended and Restated Agreement for Operations, Maintenance and Management Services

THIS AMENDED AND RESTATED AGREEMENT is effective as of the 1st day of January, 2014, by and between the CITY OF NEWBURGH (hereinafter "CITY"), a political subdivision of the State of New York, the principal address of which is 83 Broadway, Newburgh, New York 12550 and SEVERN TRENT ENVIRONMENTAL SERVICES, INC. (hereinafter "SEVERN TRENT"), a Texas corporation, with offices at 1991 Route 6, Carmel, New York 10512.

WHEREAS, pursuant to an Agreement for Operations, Maintenance and Management Services (the "Original Agreement") between the parties dated as of August 1, 2003, the CITY employed SEVERN TRENT to manage, operate and maintenance its wastewater and related treatment facilities; and

WHEREAS, the parties amended the Original Agreement in January 2009 and agreed extend the term of the Original Agreement; and

WHEREAS, the parties now desire to further extend the term of the Original Agreement, as amended, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, CITY and SEVERN TRENT agree as follows:

1. GENERAL

- 1.1 Definitions of words or phrases used in this Agreement and the attachments are contained in Appendix A. Any terms defined in this Agreement but not included in Appendix A shall have the meaning ascribed to such terms as set forth in this Agreement.
- 1.2 All grounds, facilities, equipment and vehicles now owned by CITY or acquired by CITY shall remain the property of CITY, except as may otherwise be provided for herein.
- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York. Any and all disputes involving this Agreement and not subject to the provisions of Article 11 hereof, including the breach or alleged breach thereof, may only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.
- 1.4 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement in violation of the provisions of Article 5 herein.

- 1.5 All notices shall be in writing and transmitted by certified mail to the addresses stated above.
- 1.6 This Agreement, including Appendices "A" through "F", is the entire Agreement between the parties and supersedes any other understandings or writings between or among the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "SEVERN TRENT" and "CITY" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated as long as the sense and meaning of the phrase or clause affected is preserved.
- 1.8 It is understood that the relationship of SEVERN TRENT to CITY is that of independent contractor, except as designated otherwise in Sections 12.6 and 12.10. In accordance with such status as independent contractor, SEVERN TRENT covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.
- 1.9 Neither party, one to the other, shall be considered a consumer nor a merchant pursuant to any consumer or trade practices law or regulation, and the parties specifically agree that the application of any such laws or regulations to the terms and conditions herein is not the intention of either of them.
- 1.10 The rights and remedies provided herein to either party shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.
- 1.11 In construing this Agreement, the following principles shall be followed: (i) no consideration shall be given to the captions of the articles, sections, subsections or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in construction; (ii) no consideration shall be given to the fact or presumption that any of the parties had a greater or lesser hand in drafting this Agreement; (iii)

examples shall not be construed to limit, expressly or by implication, the matter they illustrate; (iv) the word "includes" and its syntactic variants mean "includes, but is not limited to" and corresponding syntactic variant expressions; (v) the plural shall be deemed to include the singular, and vice versa; (vi) each gender shall be deemed to include the other genders; (vii) each exhibit, appendix, attachment and schedule to this Agreement is a part of this Agreement; and (viii) any reference herein or in any schedule hereto to any agreements entered into prior to the date hereof shall include any amendments or supplements made thereto.

2. PROCUREMENT OF AGREEMENT

2.1 SEVERN TRENT represents and warrants that no person or selling agency has been employed or retained by SEVERN TRENT to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. SEVERN TRENT further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. SEVERN TRENT makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof. SEVERN TRENT's representations and warranties as specified in this Section 2.1 shall not extend and shall specifically exclude all promises, agreements and/or arrangements made between SEVERN TRENT and its employees, corporate officers and/or sales consultants.

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

3. CONFLICT OF INTEREST

3.1 SEVERN TRENT represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest (without obtaining a prior written waiver from the CITY as specified in the immediately following sentence), directly or indirectly which would or may conflict in any adverse manner or adverse degree with the performance or rendering of the services herein

provided. SEVERN TRENT further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, nor any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person is able to obtain in advance a written waiver from the CITY, which waiver may be provided or withheld in the CITY's sole and absolute discretion.

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

4. FAIR PRACTICES

- 4.1 SEVERN TRENT represents, warrants and certifies under penalty of perjury, that to the best of its knowledge and belief:
- A. The prices in this Agreement have been arrived at independently by SEVERN TRENT without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;
 - B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by SEVERN TRENT have not been knowingly disclosed by SEVERN TRENT prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and
 - C. No attempt has been made or will be made by SEVERN TRENT to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.
- 4.2 The fact that SEVERN TRENT (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists

for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

5. ASSIGNMENT AND SUBCONTRACTING

5.1 Unless specified in Section 5.2 or Section 12.10 below, SEVERN TRENT shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the services to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY, which consent shall not be unreasonably withheld or delayed. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any services provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

5.2 Notwithstanding the provisions of Section 5.1 above, SEVERN TRENT shall have the right to hire and/or retain subcontractors, vendors and/or materials suppliers at SEVERN TRENT's discretion and without the CITY's approval but only to the extent that such subcontractors, vendors and/or materials suppliers are to be compensated in an amount of Ten Thousand (\$10,000) Dollars or less in each instance; or if such subcontractors, vendors and/or materials suppliers are to be compensated by more than Ten Thousand (\$10,000) Dollars, CITY approval shall nevertheless not be required if such subcontractors, vendors and/or materials suppliers are not retained to perform any manual labor at or to the Project.

5.3 Failure of SEVERN TRENT to obtain any required consent to any assignment shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to SEVERN TRENT, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay SEVERN TRENT's employees for past service in accordance with the provisions of Section 10.10 hereunder.

5.4 The provisions of Section 5.1 above shall not hinder, prevent, or affect any assignment by SEVERN TRENT for the benefit of its creditors made pursuant to the laws of the State of New York.

5.5 Upon written notice to SEVERN TRENT, this agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

6. BOOKS AND RECORDS

6.1 SEVERN TRENT agrees to maintain, in accordance with generally accepted accounting principles, accurate books, records, and documents which sufficiently and properly reflect all such Costs expended or incurred by SEVERN TRENT in the performance of this Agreement that are subject to the CITY's audit rights as specified in Article 8 below.

7. RETENTION OF RECORDS

7.1 SEVERN TRENT agrees to retain all books, records and other documents relevant to this Agreement for three (3) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any other person duly authorized by and acting on behalf of the CITY, shall have full access and the right to examine any of said materials during said period, but solely for the purposes specified in Article 8 below.

8. AUDIT BY THE CITY AND OTHERS

8.1 All Claimant Certification forms or invoices presented for payment to be made hereunder either in excess of or in addition to the Annual Fee, or related to the Maintenance and Repair expenditure, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY, which audit may be conducted by or on behalf of the CITY at the CITY's sole cost and expense. SEVERN TRENT shall submit any and all documentation and justification in support of all such expenditures or fees subject to an audit under this Agreement as specified above so that the CITY may evaluate the reasonableness of the charges, and SEVERN TRENT shall make such records available to the CITY upon request. All books, Claimant Certification forms, records, reports, paid receipts or cancelled checks, and any and all similar material to the extent same is related either to a payment or a request for payment in excess of or in addition to the Annual Fee, or to a Maintenance and Repair expenditure, may be subject to periodic inspection, review and audit by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise.

9. PROTECTION OF CITY PROPERTY

9.1 Except as otherwise provided in this Agreement, SEVERN TRENT assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused by the negligent acts or omissions or lack of good faith of SEVERN TRENT, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by SEVERN TRENT

as an expert consultant specialist or subcontractor hereunder. SEVERN TRENT's responsibility for any such loss or damage shall be secondary to and subject to an offset by an amount equal to any and all insurance proceeds that the CITY may be entitled to recover from its' insurance company on account of such loss or damage. Nothing specified herein shall be construed to subject SEVERN TRENT to any liability for losses or damages occurring as a result of (i) reasonable wear and tear; or (ii) Unforeseen Circumstances; or (iii) the occurrence of any event excusing SEVERN TRENT's performance hereunder as specified in Section C.1 of Appendix C hereunder.

9.2 In the event that SEVERN TRENT is contractually responsible to the CITY pursuant to Section 9.1 above for any such loss or damage to CITY property, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in reasonably sufficient sums to cover the cost of such loss or damage beyond the amount of all insurance proceeds that the CITY may be entitled to recover.

9.3 Subject to the limitations of this Article 9, SEVERN TRENT agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

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

10. TERM AND TERMINATION

10.1 The initial term of this Agreement shall be five (5) years commencing January 1, 2014 unless terminated for cause as provided for in Section 10.3. Thereafter, this Agreement shall be automatically renewed for an additional five (5) year period unless cancelled in writing by either party at least one hundred sixty (160) days prior to the expiration of the then current term.

10.2 The failure of either party to comply with the terms of this Agreement shall constitute a default. Upon default by one party, the other party may send written Notice of Termination. Such notice shall clearly specify the nature of the default and provide the defaulting party sixty (60) days to cure the default. If the default is capable of being cured within sixty (60) days but is not cured within sixty (60) days, the Agreement shall terminate at midnight of the sixtieth (60th) day following receipt of the Notice. In the case of default that cannot be cured within sixty (60) days, this

Agreement shall not terminate so long as the defaulting party has given written notice of the extension to the other party and the defaulting party has commenced and is diligently pursuing a cure. Evidence of such cure and its diligent pursuit shall be provided from the party determined to be in default to the reasonable satisfaction of the other party.

- 10.3 Notice of Termination under Sections 10.2 above shall be given in writing by personal service by an authorized agent or by certified mail, return receipt requested.
- 10.4 In the event the Agreement is terminated by the CITY under Sections 10.2 above, SEVERN TRENT shall continue to provide the scope of services as provided in this Agreement for one hundred twenty (120) days beyond the date of termination at its cost plus overhead and multiplied by 1.15.
- 10.5 Upon a notice of termination provided by either party herein, SEVERN TRENT shall assist CITY in assuming operation of the Project by CITY or by CITY's authorized new operator. If additional Cost is incurred by SEVERN TRENT at request of CITY, the CITY shall pay SEVERN TRENT such Cost without mark-up in accordance with the payment terms of Article 15.2.
- 10.6 Approximately three months (3) months prior to the expiration of the term or upon the termination of this Agreement prior to its expiration, the CITY and SEVERN TRENT shall conduct an exit review to determine whether the Project is in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted (the "Required Exit Condition"). If such exit audit establishes that the Project is not in the Required Exit Condition and that the reason therefore is not attributable to the CITY's failure to approve and pay, in a manner consistent with good engineering procedures, for all capital improvements, repair, replacement, and maintenance for which the CITY is obligated to pay pursuant to the terms and conditions of this Agreement, SEVERN TRENT shall, at its sole cost and expense, make all necessary repairs and replacements to bring the Project into compliance with the Required Exit Condition and re-perform, at SEVERN TRENT's expense, the appropriate portions of the exit review to verify that the Project is then in compliance with the Required Exit Condition.
- 10.7 Within ninety (90) days of the effective date of this Agreement and annually thereafter, SEVERN TRENT shall submit a written inventory of the equipment, tools, materials, consumables and expendable supplies and spare parts at the Project. Within ninety (90) days of the effective date of this Agreement, SEVERN TRENT shall also submit a written inventory of any and all sludge stockpiled or contained at the Project as of the first date in which SEVERN TRENT began to operate the Project under this Agreement. The CITY shall have thirty (30) days to verify and accept

SEVERN TRENT's written inventories submitted pursuant to this Section 10.8. At the termination of this Agreement, SEVERN TRENT shall provide the CITY with inventory in quantity and/or value equal to or greater than the initial inventory, reasonable wear and tear excepted.

- 10.8 Upon the expiration or earlier termination of this Agreement, SEVERN TRENT shall not leave a sludge blanket stockpiled at the primary clarifiers of the Project greater than one (1) foot in depth. All costs associated with the treatment, transportation and disposal of any sludge inventory greater than one (1) foot in depth stockpiled or contained at the primary clarifiers of the Project as of the effective date of this Agreement are not part of the Annual Fee and shall be paid to SEVERN TRENT as additional compensation within thirty (30) days following the presentation of invoices.
- 10.9 Within thirty (30) days following the termination of this Agreement, the CITY shall pay SEVERN TRENT for all unpaid services, if any, provided up to the effective date of termination and in the event that this Agreement is terminated by the CITY pursuant to Section 10.2 above or Article 19 below, the CITY shall also pay SEVERN TRENT the Demobilization Fee.
- 10.10 SEVERN TRENT agrees to account for and refund to the CITY within thirty (30) days following the termination of this Agreement, all unearned funds, if any, which have been paid to SEVERN TRENT pursuant to this Agreement.

11. TECHNICAL DISPUTES

- 11.1 Any dispute arising pursuant to this Agreement, that is not resolved by mutual agreement within a sixty (60) calendar day cooling off period, involving any matter(s) primarily requiring the exercise of engineering judgment and an amount in controversy, if any, of two hundred thousand (\$200,000) Dollars or less shall be brought before a nationally recognized independent consulting engineering firm (the "Independent Engineer") experienced in the design and/or the operation of wastewater treatment facilities as selected in accordance with the procedures set forth in Section 11.2 below who shall assume exclusive jurisdiction thereof. Any other dispute may be brought to the Independent Engineer upon the parties agreement or shall be subject to resolution as the parties may deem appropriate, including through mediation, arbitration or litigation. The determination of whether a matter primarily requires engineering judgment shall be resolved in accordance with procedures established by the American Arbitration Association. The Independent Engineer shall be required to make a final determination, not subject to appeal, within thirty (30) days from receipt of such dispute by the Independent Engineer. The CITY and SEVERN TRENT shall be bound by the terms of the Independent Engineer's final determination. The determination by the

Independent Engineer shall be made in writing, shall contain written findings of fact on which the decision is based and shall be specifically enforceable by a court of competent jurisdiction. The reasonable expenses of both parties incurred in connection with the resolution of any dispute hereunder and the fees of the Independent Engineer shall be borne and paid for by the party losing such dispute; except, however, that each party shall bear the cost of its own attorney's fees, unless the Independent Engineer determines that the nature of the action or defense of the losing party was frivolous, in which event the prevailing party's fair and equitable attorney's fees incurred will be paid by the losing party in addition to the losing party's payment of other expenses.

11.2 The Independent Engineer, and any successor Independent Engineer, shall be mutually selected by the parties herein to serve in such capacity pursuant to this Agreement. If SEVERN TRENT and the CITY have not agreed upon the selection of the Independent Engineer within ninety (90) days following the initial sixty (60) calendar day cooling off period referred to in Section 11.1 above, the parties shall arrange for the Independent Engineer to be selected by the American Arbitration Association as expeditiously as possible. The Independent Engineer shall not otherwise be affiliated with either party or associated with the transactions contemplated by this Agreement. Such Independent Engineer shall have substantial knowledge with respect to wastewater treatment systems. Until the final resolution of the parties' dispute by the Independent Engineer, the fees of the Independent Engineer so selected shall be paid one-half by SEVERN TRENT and one-half by the CITY. As stated in Section 11.1 above, the losing party shall be ultimately responsible for the payment of all of the Independent's Engineer's fees. SEVERN TRENT and the CITY shall cooperate to retain the Independent Engineer upon terms and conditions mutually satisfactory to SEVERN TRENT and the CITY as soon as practicable after selection of the Independent Engineer.

11.3 If the Independent Engineer resigns, if the parties mutually agree to terminate the services of the selected Independent Engineer or if either party demonstrates that the Independent Engineer is subject to a conflict of interest or has committed malfeasance, then the parties shall mutually agree on a replacement. The successor Independent Engineer shall not otherwise be affiliated with either party or associated with the transactions contemplated by this Agreement. The successor Independent Engineer shall also have substantial knowledge with respect to wastewater treatment systems. If SEVERN TRENT and the CITY have not agreed upon the selection of a successor Independent Engineer within ninety (90) days of the resignation or termination of the Independent Engineer, the parties shall arrange for a new Independent Engineer to be selected by the American Arbitration Association as expeditiously as possible. The

successor Independent Engineer's fees shall be paid in the same manner as provided in Sections 11.1 and 11.2.

12 SEVERN TRENT's RIGHTS AND OBLIGATIONS

- 12.1 Within the design capacity and capabilities of the Project as listed in Appendix C.1 and subject to the terms and conditions specified in Appendix C.1 and elsewhere in this Agreement, SEVERN TRENT shall manage, operate and maintain the Project so that effluent discharged from the Project meets the requirements specified in Appendix C and the SPDES Permit in effect at the time of execution of this Agreement, and any revisions or updates to the SPDES Permit during the term of this Agreement.
- 12.2 SEVERN TRENT may modify the process and/or facilities to achieve the objectives of this Agreement; provided, however, that in the absence of an Emergency as defined below, no modification shall be made without CITY's advance written approval but only to the extent that any such modification shall cost in excess of Seven Thousand Five Hundred (\$7,500.00) Dollars in each instance and shall result in the creation and installation of a permanent fixture in or on the Project. In the case of emergencies threatening the immediate Shutdown of, or substantial reduction in the operational capacity of the Project, or the life, health or property of the CITY and/or SEVERN TRENT, their employees and/or agents or others (for purposes of this Article 12 only, an "Emergency"), SEVERN TRENT shall have the right to take all necessary action and make the necessary modification to the Project without the prior written approval of the CITY. Except as noted in the next sentence or to the extent caused by the negligent acts or omissions of SEVERN TRENT, any cost incurred during an Emergency shall be subject to reimbursement by the CITY following the CITY's subsequent review and approval. Any cost unnecessarily incurred in an Emergency shall be borne by SEVERN TRENT without reimbursement by the CITY, but only to the extent it is reasonably determined that SEVERN TRENT's actions in incurring such cost were not consistent with good and prudent engineering practice given the information available to SEVERN TRENT at the time the decision to incur such cost was made.
- 12.3 SEVERN TRENT shall maintain the administration of the Industrial Pretreatment Program, the present industrial waste sampling and laboratory analysis program, as described in Appendix D. Results of all industrial sampling and testing shall be reported to CITY in a timely manner. SEVERN TRENT shall track the reporting industries' analyses of the laboratory results, submit reports on time to the regulatory agencies on the CITY's behalf including but not limited to an "IPP" report as required by the U.S. Environmental Protection Agency and such reports as may be required by the New York State Department of Environmental

Conservation, Department of Health and other regulatory agencies, and notify the City Manager and CITY's Corporation Counsel of any violation. SEVERN TRENT will prepare draft notices of violations where appropriate and will submit them to the City Manager.

- 12.4 SEVERN TRENT shall perform all Maintenance and Repairs for the Project, and submit a monthly accounting to CITY, along with a detailed invoice if Maintenance and Repair expenditures exceed the Maintenance and Repair Limit specified in Article 14.1.
- 12.5 SEVERN TRENT shall maintain the CITY's CSOs and perform required tasks necessary to insure satisfactory operation. SEVERN TRENT shall monitor the status of the CSO's from the existing CSO monitoring panel at the Wastewater Treatment Plant to insure proper operation with respect to dry weather overflows. SEVERN TRENT will inspect the eleven CSO regulators and two unmonitored diversion manholes on a regular basis. It is understood and agreed that the CITY will provide the necessary special cleaning equipment, with operator (i.e. vac and jetter truck), to assist in CSO servicing. Coordination of this effort shall be directed by SEVERN TRENT's on site supervisor and designated CITY representative.
- 12.6 SEVERN TRENT shall act as the agent for the administration of the CITY's hauled waste acceptance program. SEVERN TRENT will endeavor to ensure all applicable local, state and federal regulations, ordinances and restrictions are followed. SEVERN TRENT shall perform visual, pH and manifests tests to check the quality of the incoming hauled waste. If SEVERN TRENT shall, in its reasonable discretion, suspect that such hauled waste contains abnormal or biologically toxic substances which cannot be treated by the Project's processes or which might adversely impair the ability of the Project to comply with the CITY's SPDES Permit, SEVERN TRENT shall have the right to reject such hauled waste. SEVERN TRENT will provide the necessary permit review, record keeping and accounting services pertinent to the program and will recommend hauled waste user rates based on the cost of processing, market conditions and guidelines established in the CITY's Sewer Use Ordinance. In exchange for these services, SEVERN TRENT will receive twenty percent (20%) of the revenues derived from this program. This compensation will be billed on a monthly basis and will be due within thirty (30) days of invoice receipt.
- 12.7 Unless provided otherwise in this Agreement, SEVERN TRENT shall pay all Costs incurred in normal Project operations.
- 12.8 SEVERN TRENT shall staff the Project with employees who have met appropriate certification requirements of the State of New York.

- 12.9 SEVERN TRENT shall prepare state and federal permit performance reports and submit them to the CITY for timely transmittal to appropriate regulatory agencies, or submit same directly to such agencies and provide copies to the CITY, as CITY may direct.
- 12.10 SEVERN TRENT will designate and select the sludge disposal facilities to be used for the CITY's waste materials, subject to the CITY's prior written approval which approval shall not be unreasonably withheld or delayed. SEVERN TRENT will only select disposal facilities that are properly permitted and meet all the state and federal regulations for the CITY's waste materials. Should the disposal facility selected by SEVERN TRENT be rejected by the CITY, SEVERN TRENT will find an alternate site for CITY approval. Should the CITY unreasonably withhold its approval of any sludge disposal facility selected by SEVERN TRENT, the CITY shall compensate SEVERN TRENT for all additional tipping and transportation charges, if any, in the amount equal to the excess of all transportation and disposal costs incurred by SEVERN TRENT over such transportation and disposal costs that SEVERN TRENT would have incurred had the CITY approved the disposal site originally selected by SEVERN TRENT. Notwithstanding the provisions of sludge transportation and disposal services by SEVERN TRENT or any of its subcontractors hereunder, title and ownership to the sludge and any and all liability associated therewith shall at all times remain with the CITY. As of the date hereof, SEVERN TRENT has notified the CITY that it has entered into a contract with Synagro Northeast, Inc. ("Synagro") for the transportation and ultimate disposal of sludge at Synagro operated sludge treatment and incineration facilities in Waterbury, Connecticut or Woonsocket, Rhode Island and the CITY hereby approves and consents to the retention of Synagro by SEVERN TRENT to provide such sludge transportation, treatment and disposal services.
- 12.11 SEVERN TRENT shall perform all laboratory testing and sampling required by the plant performance portion of the SPDES Permit, as may be updated from time to time.
- 12.12 SEVERN TRENT shall maintain a physical inventory of CITY's vehicles and equipment in use at the Project and shall submit same annually to the CITY for review.
- 12.13 SEVERN TRENT shall provide reasonable access to Project for CITY's personnel on a twenty-four (24) hour basis. Visits may be made at any time by any of CITY's employees so designated by CITY's representative. Keys for the Project shall be provided to CITY by SEVERN TRENT. All visitors to the Project shall comply with SEVERN TRENT's operating and safety procedures and shall either provide prior notice of their intended visit, or shall announce their visit upon their arrival at the Project.

- 12.14 SEVERN TRENT shall operate the project using methods which will minimize odors, noise and energy consumption within the limits and capabilities of the facility and its equipment.
- 12.15 SEVERN TRENT shall implement and maintain an operator safety program in compliance with all applicable laws, rules and regulations and make recommendations to CITY regarding the need, if any, for CITY to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to SEVERN TRENT's operations hereunder.
- 12.16 SEVERN TRENT shall provide to the CITY, in writing, the name of SEVERN TRENT's authorized representative. SEVERN TRENT will provide the CITY with a 24-hour emergency contact list, which shall remain current and up-to-date at all times.
- 12.17 SEVERN TRENT shall perform other services that are not included in the Scope of Services as directed by CITY. Such services will be invoiced to CITY at SEVERN TRENT's Cost plus ten percent (10%), except with respect to the cost associated with the transportation and disposal of excess sludge volumes for which SEVERN TRENT shall be compensated in accordance with Section 14.4 herein.

13. SCOPE OF SERVICE – CITY

CITY SHALL:

- 13.1 Fund the Annual Fee and approve and pay for in a timely fashion in accordance with the terms of Article 15 hereunder all necessary Capital Expenditures and Maintenance and Repair expenditures above the Maintenance and Repair Limit in order to allow for the operation and maintenance of the Project in a manner consistent with prudent engineering practices.
- 13.2 Pay all costs (multiplied by 1.10 or as otherwise negotiated under the applicable circumstances in accordance with Article 16 hereunder) incurred by SEVERN TRENT as a result of (i) the occurrence of an Unforeseen Circumstances; and/or (ii) the occurrence any other event excusing SEVERN TRENT's performance hereunder as specified in Section C.1 of Appendix C hereunder; and/or (iii) the imposition upon SEVERN TRENT of water or sewage use fees associated with and/or equated to domestic water usage and/or wastewater discharge including all of the sewer service charges and volume charges levied under the CITY's Sewer Use Ordinance; and/or (iv) the provision of municipal or private surveillance and alarm monitoring by third party vendors.

- 13.3 Pay directly to the appropriate utility companies, the cost of all utilities including power and gas. Accordingly, SEVERN TRENT shall not assume any liability for utility costs other than those as specifically agreed to under Section 14.5.
- 13.4 In addition to Sections 13.1 and 13.2 above, pay in a timely fashion in accordance with the terms of Article 15 hereunder for all other costs and expenses that the CITY is obligated to pay pursuant to Article 14 below or pursuant to any other provision of this Agreement.
- 13.5 Keep in force all Project warranties, guarantees, easements and licenses that have been granted to CITY and are not transferred to SEVERN TRENT under this Agreement, including the SPDES Permit.
- 13.6 Pay all property, franchise, sales, use or other taxes associated with the Project other than taxes imposed on SEVERN TRENT's net income or taxes associated with SEVERN TRENT's employees. The prices hereunder do not include sales, use, excise, ad valorem, property or other taxes, other than taxes based on income, now or hereafter imposed directly or indirectly, by any governmental authority or agency with respect to this Agreement and the services provided and materials furnished hereunder. The CITY shall pay directly or reimburse SEVERN TRENT for any such taxes that SEVERN TRENT may be required to pay, including without limitation, sales taxes that SEVERN TRENT may be required to pay, under applicable law, in connection with its purchase or use, in performing its obligations to the CITY hereunder, of equipment, supplies, material, and/or services.
- 13.7 Provide SEVERN TRENT at no cost, within a reasonable time after request, with the temporary use of any piece of CITY's heavy equipment that is available so that SEVERN TRENT may discharge its obligations under this Agreement in the most cost-effective manner.
- 13.8 Provide all licenses for CITY's vehicles used in connection with the Project.
- 13.9 Provide for SEVERN TRENT's use of all vehicles and equipment presently in use at the Project, allowing for the unavailability of any such vehicles due to standard wear and tear, maintenance, accidents, and other causes.
- 13.10 Enforce the Industrial Pretreatment Program in compliance with state standards, all relevant permits, and the Clean Water Act, as amended, and other laws.

- 13.11 Provide to SEVERN TRENT, in writing, on the day services begin under this Agreement, the name of CITY's authorized representatives. Such representatives shall always include the CITY Manager and her/his designated representative.
- 13.12 Disclose any and all information it now has, or may have in the future, relating to the Project that may be relevant to SEVERN TRENT in performing its duties and obligations hereunder.
- 13.13 Comply with applicable combined sewer overflow regulations under local, State and federal laws. Notwithstanding any provision to the contrary contained herein including the services to be provided by SEVERN TRENT pursuant to Section 12.5 hereunder, SEVERN TRENT shall not be responsible for any such noncompliance or resulting penalties or fines unless same is caused solely by SEVERN TRENT's negligence and the CITY shall and does hereby indemnify SEVERN TRENT from and against any liability associated with same. SEVERN TRENT shall and does hereby indemnify the CITY from and against any liability associated with such violations of applicable combined sewer overflow regulations caused solely by SEVERN TRENT's negligence.
- 13.14 Maintain all sewer lines, pipes, force mains, and all other wastewater transportation lines that are not part of the Project under SEVERN TRENT's control in a manner that will control, to the extent practicable, any leakage of wastewater from or any infiltration of storm water into any such lines to the extent that the infiltration causes damage to the operation of any portion of the Project.
- 13.15 Designate, upon the effective date of this Agreement and throughout its term, an authorized representative to administer this Agreement on behalf of the CITY. The CITY may at its discretion change its authorized representative upon a three (3) day prior written notice to SEVERN TRENT.
- 13.16 Otherwise comply with each and every other obligation imposed upon the CITY pursuant to this Agreement.

14. COMPENSATION

- 14.1 SEVERN TRENT's compensation under this Agreement shall consist of an Annual Fee. For the first year of this Agreement, SEVERN TRENT's Annual Fee is One Million Nine Hundred Sixty Seven Thousand Three Hundred Fifty Six (\$1,967,356) Dollars. The Maintenance and Repair Limit included in the Annual Fee is Seventy Five Thousand (\$75,000.00) Dollars and the Annual Fee accounts for the treatment and disposal by SEVERN TRENT of a quantity of sludge up to Nine Thousand (9,000) wet tons per Agreement year. The Annual Fee and sludge quantities will

be evaluated two (2) years after the upgrades to the sludge dewatering belt filter presses are installed to determine if changes to the monthly sludge quantity and energy savings in accordance with Section 14.5 can be adjusted. Subject to the provisions of Section 14.4 hereunder, the Annual Fee shall also include the cost of all sodium hypochlorite utilized by SEVERN TRENT in connection with the Project.

- 14.2 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement year, SEVERN TRENT will rebate the entire difference to CITY. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, CITY will have the right to provide prior approval for all Maintenance and Repair expenditures, except in the event of an Emergency as specified in Section 12.2. CITY will pay the excess to SEVERN TRENT in accordance with Article 15.2. SEVERN TRENT will notify CITY when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit. In addition, SEVERN TRENT shall provide the CITY with an accounting no less frequently than quarterly, and whenever good business practice in the reasonable judgment of SEVERN TRENT and/or the CITY calls for such an accounting, of Maintenance and Repair expenditures.
- 14.3 The Annual Fee shall be increased on each anniversary date in accordance with the formula set forth in Appendix E and will become effective immediately upon the anniversary date hereof. In no event shall the Annual Fee be reduced by virtue of this Section.
- 14.4 CITY will pay as additional compensation to SEVERN TRENT (i) any increases in the cost associated with the transportation and disposal of sludge as a result of increases in such costs above the Baseline Tip Fee; and (ii) any and all costs (including applicable sales/use taxes due on any sludge transportation and treatment services rendered by subcontractor to SEVERN TRENT) multiplied by 1.075 associated with the transportation and disposal of sludge in volumes exceeding seven hundred fifty (750) wet tons (with dry solids content between 15% - 28%) per each calendar month.

CITY shall be entitled to credit(s) against the Annual Fee in any calendar month in which less than seven hundred fifty (750) wet tons (with dry solids content between 15% - 28%) are disposed. The amount of each such credit shall be equal to the (i) difference between 750 tons and the actual number of tons disposed in any particular calendar month; multiplied by (ii) the product obtained from multiplying Baseline Tip Fee by a factor of 1.075.

CITY shall be entitled to credit(s) against the Annual Fee for any decreases in the cost associated with the transportation and disposal of sludge as a result of decreases in such costs below the Baseline Tip Fee.

- 14.5 SEVERN TRENT agrees that, for the plant hydraulic flows and loadings as stipulated in Appendix C and for the treatment and ancillary processes currently in place or under construction, the energy consumption will be capped at 1,815,000 kWh of electrical energy and 34,000 CCF of gas per year. SEVERN TRENT will be responsible for all energy-related costs above this cap, unless agreement is reached among both parties. The CITY agrees to share with SEVERN TRENT any cost savings that result from lower electricity consumption as outlined in the following table. Savings that are demonstrably the result of the investment by either party (other than the fine bubble diffuser project) will flow to the party making the investment.

Usage in kilowatt hours	Portion of savings shared
1,485,001 to 1,815,000	0%
1,402,501 to 1,485,000	15%
1,320,001 to 1,402,500	30%
Less than 1,320,000	45%

- 14.6 CITY requirements to assess, collect and set aside revenues and/or taxes or other monies to pay for the municipal services to be provided for under this Agreement shall remain unchanged, and CITY warrants that it shall timely and properly assess, collect and set aside sufficient funds to make all payments hereunder as may be legally payable by it.
- 14.7 Any computation made on the basis of a stated period shall be adjusted on a pro rata basis to take into account any initial or final period that is a partial period. In computing any such adjustments, a month shall be taken as a month containing thirty (30) days and a year shall be taken as a year containing three hundred sixty (360) days.

15. PAYMENT OF COMPENSATION

- 15.1 One-twelfth (1/12) of the Annual Fee for the current year shall be due and payable in advance on the first of the month for each month that services are to be provided.
- 15.2 All other compensation to SEVERN TRENT is due upon receipt of SEVERN TRENT's invoice and payable within thirty (30) days.
- 15.3 Any monies arising from Article 14.2 will be paid to CITY within forty-five (45) days after the end of each Agreement year.

15.4 CITY shall pay interest at an annual rate equal to the maximum rate permitted by New York law for municipal corporations on the unpaid balance not paid and received within thirty (30) calendar days, such interest being calculated from the due date of the payment.

16. SCOPE CHANGES

16.1 CITY and SEVERN TRENT shall negotiate an increase or decrease in SEVERN TRENT's Annual Fee in the event of a Change in Law, but until such an agreement is reached the provisions of Section 13.2 hereunder shall be utilized to determine such subcontractors, vendors and/or materials suppliers the additional compensation due SEVERN TRENT hereunder. Compensation for scope changes relating to changes in Project influent characteristics (hydraulic flows and loadings) are provided for in Appendix C.

16.2 CITY has the right to negotiate with SEVERN TRENT for additional services not included in the scope of services of this Agreement. Any such additional services shall only be provided pursuant to the terms of a written agreement properly executed by the parties.

17. INDEMNITY, LIABILITY AND INSURANCE

17.1 Each party hereby agrees to indemnify and hold the other party harmless from any liability or damages for property damage or bodily injury, including death, which may arise from indemnifying party's negligence, willful misconduct or failure to perform in accordance with the terms and conditions of this Agreement. Nothing in this Agreement shall be construed to impose upon a party, nor shall there be imposed, liability for indirect, incidental, consequential or punitive damages.

17.2 In the event that the parties share liability due to the joint fault of the parties, whether negligence, willful misconduct or failure to perform this contract as agreed on, then each party shall indemnify the other party in proportion to its percentage of fault leading to damage.

17.3 Each party shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations of the effluent quality requirements provided for in Article 12.1 that are a result of the indemnifying party's fault. If there is a joint cause for the fine, the fine or penalty shall be shared between SEVERN TRENT and CITY according to the percentage that each has contributed to the cause of the fine or penalty. Each Party will assist the other to contest any such fines in administrative proceedings and/or in court prior to any payment by SEVERN TRENT. SEVERN TRENT reserves the right to contest government or private actions, suits or proceedings for violations through administrative procedures or otherwise prior to its payment of any such fine or penalty.

- 17.4 Subject to Sections 17.1, 17.2 and 17.3, CITY shall indemnify and hold SEVERN TRENT harmless from and against any liability for losses or damages and/or the imposition of liability as a result of SEVERN TRENT's contractual relationship to CITY as set forth herein and for which there is no negligence, willful misconduct, failure to perform this contract as agreed on or other fault by or on the part of SEVERN TRENT.
- 17.5 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix F. Each party shall provide the other party with satisfactory proof of insurance.
- 17.6 It is understood and agreed that the need for certain services, arising under this Agreement, may be uninsurable or deemed too costly to insure. These would include instances where hazardous or toxic materials may be introduced, imported or released into the facilities; and instances where on account of design or related failure, or misuse of the facilities by its customers or members of the general public, water and/or wastewater backs-up into residences, buildings, commercial facilities and other areas. In these instances, SEVERN TRENT shall be responsible for exerting reasonable efforts to minimize any problems and to reduce CITY's financial exposure. Nothing herein shall relieve SEVERN TRENT from its liability in situations where it is shown to be negligent.
- 17.7 In the event that claims(s) raised against SEVERN TRENT on account of this Agreement, or on account of the services performed hereunder, is/are covered under SEVERN TRENT's insurance policies required of SEVERN TRENT hereunder, SEVERN TRENT shall not be responsible for any loss, damage or liability beyond the policy amounts contractually required hereunder and the limits and conditions of such insurance policies. With respect to any cause of action and/or claim raised against SEVERN TRENT that is not covered by the insurance policies required of SEVERN TRENT hereunder arising under this Agreement, SEVERN TRENT's liability shall not exceed Two Million (\$2,000,000) Dollars. Notwithstanding the above, this limitation of liability shall not apply to: a) claims brought directly against SEVERN TRENT by unrelated third parties; and b) claims arising from SEVERN TRENT's gross negligence or willful misconduct.

18. DISPUTES AND FORCE MAJEURE

- 18.1 In the event activities by employee groups or unions cause a disruption in SEVERN TRENT's ability to perform at the Project, CITY, with SEVERN TRENT's assistance or SEVERN TRENT at its own option, may seek appropriate injunctive court orders. During any such disruption, SEVERN TRENT shall operate the facilities on a best-efforts basis until any such disruptions cease.

18.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances. However, this Article 18.2 may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.

19. APPROPRIATION OF FUNDS

19.1 To the extent that sufficient monies are not appropriated or otherwise made available to support the operation and maintenance of the Project by SEVERN TRENT, this Agreement shall be terminated without any further liability on the part of either party hereto (effective as of the last day for which sufficient funds have been appropriated) except that SEVERN TRENT shall be paid by the CITY for all services rendered through the date of termination plus the Demobilization Fee.

20. CURRENT OR FORMER CITY EMPLOYEES

20.1 SEVERN TRENT represents and warrants that it shall not knowingly solicit the services of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said SEVERN TRENT has or may have with the CITY without the express written permission of the CITY. This restriction shall not apply to general solicitations for employees that SEVERN TRENT may be engaged from time to time. To the best of its knowledge, SEVERN TRENT did not employ during the three (3) years preceding the effective date of this Agreement any current or former CITY employee that has or may have had an actual or perceived conflict of interests due to their position with the CITY.

20.2 The breach or violation of Section 20.1 above shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to SEVERN TRENT, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay SEVERN TRENT's employees for past service in accordance with the provisions of Section 10.10 hereunder.

(Signatures Appear on the Next Page)

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

IN PRESENCE OF:

THE CITY OF NEWBURGH

BY: _____
JAMES A. SLAUGHTER
Interim City Manager

DATED: _____

SEVERN TRENT ENVIRONMENTAL
SERVICES, INC.

BY: _____

DATED: _____

Approved as to form:

MICHELLE KELSON
Corporation Counsel

JOHN J. ABER
Comptroller

APPENDIX A

DEFINITIONS

“Annual Fee” means a predetermined, fixed sum for SEVERN TRENT’s services. The Annual Fee includes Cost and profit but shall exclude all items for which SEVERN TRENT is entitled to reimbursement or for additional compensation as provided in this Agreement.

“Baseline Tip Fee” shall mean the total sum of Eighty-Six and 88/100 (\$86.88) Dollars (inclusive of sales/use taxes at the applicable rate of 8.125% in effect as of the date of this Agreement) paid for the transportation and disposal of each wet ton of sludge (with dry solids content between 15% -28%). The Baseline Tip Fee shall be adjusted with each adjustment of the Annual Fee in direct proportion to the percentage change made to the Annual Fee hereunder.

“Biologically Toxic Substances” means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of CITY’s SPDES Permit. Biologically toxic substances include, but are not limited to, slug loads, heavy metals, phenols, cyanides, pesticides and herbicides.

“Capital Expenditures” means any expenditures for (1) the purchase of new equipment or facility items that cost more than Seven Thousand Five Hundred (\$7,500.00) Dollars; or (2) major repairs which significantly extend equipment or facility service life and cost more than Seven Thousand Five Hundred (\$7,500.00) Dollars; or (3) expenditures that are planned, non-routine and budgeted by CITY.

“Change in Law” is defined as the occurrence of any of the events listed in (i) through (iv) below, which results or can reasonably be expected to result in either (a) the need to make a Capital Improvement at or to Project in order for SEVERN TRENT to operate and maintain the Project in accordance with this Agreement and all applicable laws, rules and regulations or (b) a direct increase or decrease to the cost of managing, operating or maintaining the Project in accordance with this Agreement and all applicable laws, rules and regulations:

(i) there is passed or promulgated any federal, state, or other local law, statute, ordinance, rule or regulation different from those existing on the date this Agreement is executed; or

(ii) there is passed or promulgated any amendment to, or change in, any federal, state, or other local law, statute, ordinance, rule or regulation (including any applicable sales tax regulation) following the date of this Agreement; or

(iii) following the execution of this Agreement, there comes into existence an order or judgment of any federal, state, or local court, administrative agency or other governmental body containing interpretations of any applicable law, rule and/or regulation relating to the operation or maintenance of the Project or the health and safety of SEVERN TRENT's employees that is inconsistent with generally accepted interpretations in effect on the date this Agreement is executed; or

(iv) after the effective date of this Agreement any change occurs which affects the issuance or renewal, or causes a suspension, termination, interruption, revocation, denial or failure of renewal (for reasons other than SEVERN TRENT's fault or failure by SEVERN TRENT to comply with the terms of this Agreement), of any official permit, license or necessary approval by the USEPA, the Occupational Safety and Health Administration or the New York State Department of Environmental Conservation.

"Clean Water Act" means as the Federal Water Pollution Control Act, as same may be amended from time to time, 33 USC §1251 et seq.

"Cost" means all Direct Cost and Indirect Cost determined on an accrual basis in accordance with generally accepted accounting principles.

"Combined Sewer Overflow" or "CSO" means CITY's combined sewer overflow system, consisting of the combined sewer outfalls discharging to the Hudson River, and the pipes, manholes, weirs and regulators further described in Appendix B, subsections b. and c.

"Demobilization Fee" means, as of the date in which the termination of this Agreement becomes effective, the total of (a) the book value reflected on SEVERN TRENT's balance sheet (prepared in accordance with generally accepted accounting principles) of (i) all unamortized Capital Expenditures, if any, made by SEVERN TRENT less reimbursements for same, if any, by the CITY; and (ii) all accrued liabilities for vacation pay, sick pay and other fringe benefits due to SEVERN TRENT employees working at the Project during the term of the contract and accrued by such SEVERN TRENT employees during the course of their employment by SEVERN TRENT at the Project, but only to the extent that such liabilities are not expressly assumed by the CITY and/or a successor operator to SEVERN TRENT and not for employees dismissed by SEVERN TRENT for cause prior to the termination date; and (b) the value of all materials and supplies on order but not yet delivered but only to the extent that SEVERN TRENT is unable to cancel such orders for materials and supplies without penalty; and (c) the value of all inventory of equipment, tools, spare parts, materials, consumables and supplies purchased and paid for by SEVERN TRENT in excess of the value of such inventory established for the effective date of this Agreement in accordance with Section 10.9.

"Direct Cost" means the actual cost incurred for the direct benefit of the Project including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel,

office supplies, other supplies, uniforms, telephone, postage, utilities, tools, memberships and training supplies.

“Indirect Cost” means SEVERN TRENT’s ongoing managerial, administrative and other expenses that are not directly attributable to any specific business activity related to the services provided hereunder, but are still necessary for SEVERN TRENT to function and to provide the services required of it hereunder. Indirect Cost shall include Labor Overhead.

“Industrial Pretreatment Program” or “IPP” means the municipal/industrial pretreatment program administered by SEVERN TRENT and enforced by the CITY of sampling, inspecting, analyzing and keeping records with respect to compliance by industrial and certain commercial users with the CITY’s Sewer Use Ordinance and technology based local limits, with the current Industrial Waste Dischargers listed in Appendix D.

“Labor Overhead” means corporate administrative expenditures incurred by SEVERN TRENT to support the Project and CITY.

“Maintenance” means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or by SEVERN TRENT to maximize the service life of the equipment, sewer, vehicles and facilities.

“Maintenance and Repair Limit” means the total Maintenance and Repair expenditures that SEVERN TRENT has included in the Annual Fee. Such expenditures exclude any labor costs for SEVERN TRENT’s staff assigned to the Project. SEVERN TRENT’s specialized maintenance personnel or subcontractors, not assigned at the Project, who provide such specialized services such as, but not limited to, vibration, thermographic and electrical analyses, instrumentation maintenance and repair will be charged to the Maintenance and Repair Limit.

“Project” means the Wastewater Treatment Plant and any and all equipment, vehicles, grounds, rights of way, sewers and facilities described in Appendix B and, where appropriate, the management, operations and maintenance of such.

“Repairs” means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer, vehicles or facilities or some component thereof.

“Sewer Use Ordinance” means the municipal legislative enactment, as amended from time to time, which (1) is enforceable in federal, State, or local courts, and (2) authorizes or enables the CITY to apply and enforce the IPP and the other requirements of the Clean Water Act, and any requirements created by or pursuant to this Agreement.

“Shutdown” is defined as the cessation or substantial interruption of normal operations at the Project due to the failure of operating equipment or interruption of the processes of the Project for reasons other than the negligence of the SEVERN TRENT or its employees, agents or subcontractors.

“State” means the State of New York.

“Unforeseen Circumstances” is defined as any act, event, or condition to the extent that it materially and adversely impacts the cost of performance of, or materially and adversely affects the ability, of either party to perform any obligation under this Agreement (except for payment obligations) if such act, event or condition, in light of any circumstances that should have been known or reasonably believed to have existed at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error, omission or failure to exercise reasonable diligence on the part of the party relying thereon; provided, however, that the contesting party in good faith or failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error, omission or lack of reasonable diligence of either party. Unforeseen Circumstances include but are not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, sabotage, terrorism, insurrection, riot or civil disturbance; (ii) the failure of any appropriate governmental agency or private utility to provide and maintain utilities; (iii) the inability of SEVERN TRENT and its subcontractors to gain and maintain access to all areas of the Project and/or adjoining the Project where SEVERN TRENT is required to provide services or perform any work hereunder; (iv) the presence at the Project of (x) subsurface structures, materials or conditions, having historical, geological, archeological, religious or similar significance; (y) any habitat of an endangered or protected species; or (z) functioning subsurface structures used by utilities on, underneath, near or adjacent to the Project; (v) labor disputes, strikes, work slowdowns or work stoppages affecting SEVERN TRENT and/or any subcontractor to SEVERN TRENT; and (vi) Change in Law.

“Wastewater Treatment Plant” means the CITY’s Wastewater Treatment Plant, the buildings, structures and equipment, and the roads, grounds, fences and landscaping appurtenant thereto, utilized for preliminary treatment, primary treatment secondary treatment and disinfection of the CITY’s wastewater and sludge treatment, laboratory functions and administration and management of the wastewater treatment services. The Wastewater Treatment Plant is located on the southeast corner of River Street and South William Street and the Foot of Renwick Street, City of Newburgh, New York.

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APPENDIX B

DESCRIPTION OF PROJECT

SEVERN TRENT agrees to provide the services necessary for the management, operation and maintenance of the following:

- a. All equipment, vehicles, grounds and facilities now existing within the present property boundaries or being used to operate CITY's Wastewater Treatment Plant located at:

The southeast corner of River Street and South William Street, and the Foot of Renwick Street.

- b. All stormwater overflow structures now existing and monitored on the CSO monitoring panel at the Wastewater Treatment Plant described as follows:

<u>Sewer Regulator #</u>	<u>Location</u>
001	Mouth of Quassaick Creek
002	Mouth of Quassaick Creek
003	Foot of Renwick Street
004	Foot of South Williams Street
005	Foot of First Street
006	Foot of Second Street
007	Foot of South Street
008	Clinton Street
009	Foot of Fifth Street
010	Foot of Nicoll Street
011	Foot of Park Place

- c. The regular inspection of the two unmonitored diversion manholes within the collection system.

APPENDIX C

SPDES PERMIT AND PROJECT CHARACTERISTICS

- C.1 SEVERN TRENT will operate so that effluent will meet the requirement of State Pollutant Discharge Elimination System ("SPDES") Permit No. NY-0026310 (issued on 7/1/08), a full and complete copy of which is adopted by reference herein as of the date hereof. SEVERN TRENT shall be responsible for meeting the effluent quality requirements of CITY's SPDES Permit unless one or more of the following occurs: (1) the Project influent contains Biologically Toxic Substances which cannot be removed by the existing process and facilities; (2) discharges into CITY's sewer system violate any or all regulations as stated in CITY's Sewer Use Ordinance or as required by law; (3) the flow or influent BOD5 and/or suspended solids exceeds the Project design parameters which are seven (9) million gallons of flow per day, fifteen thousand one hundred and eighty (15,180) pounds of BOD5 per day, fourteen thousand one hundred and seventy (14,170) pounds of suspended solids and a maximum peaking factor of two and five tenths (2.5) times flow; (4) if the Project is inoperable or can operate only at a reduced capacity on account of construction activities, Unforeseen Circumstances, Shutdown, or on account of the CITY's failure to approve or fund in timely fashion accordance with good engineering practices Capital Improvements and/or Maintenance activities or Repairs above the Maintenance and Repair Limit.
- C.2 In the event any one of the Project influent characteristics, suspended solids, BOD5 or flow, exceeds the design parameters stated above, SEVERN TRENT shall return the plant effluent to the characteristics required by the SPDES Permit in accordance with the following schedule after Project influent characteristics return to within design parameters.

Characteristics Exceeding <u>Design Parameters By</u>	Recovery Period <u>Maximum</u>
10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then SEVERN TRENT will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

- C.3 SEVERN TRENT shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances or is inoperable, and also within the subsequent recovery period.

C.4 The Annual Fee for services under this Agreement is based upon the following:

(a) Project influent characteristics:

Flow 9.0 million gallons per day
BOD5 175 mg/l
TSS 200 mg/l

Any change of 20 percent (20%) or more in any of these characteristics, based upon a twelve (12) month moving average, will constitute a change in scope. SEVERN TRENT and CITY shall negotiate an increase or decrease in SEVERN TRENT's compensation retroactive to the date the specific characteristic changed by ten percent (20%).

C.5 Whenever SEVERN TRENT is excused from meeting the requirements of the SPDES Permit, it will nevertheless use reasonable efforts to meet those requirements.

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APPENDIX D

INDUSTRIAL WASTE DISCHARGERS AND MONITORING PROGRAM

Adopted as a part of this Agreement is a current listing of all industries discharging into the collection system and monitored under the "CITY CODE OF ORDINANCE, Sewers, Chapter 248-1 through 248-56", as currently adopted. Said Ordinance and all permits heretofore issued by CITY to Industrial Waste Dischargers are adopted herein by referenced, as of the date thereof.

List of current permitted dischargers:

Prismatic Finishing Corporation
Unitex Textile Rental Services, Inc.

Should there be a change in industrial waste dischargers from those listed above and should this change materially change the costs of SEVERN TRENT's monitoring and IPP, the CITY and SEVERN TRENT shall negotiate an increase or decrease in SEVERN TRENT's compensation retroactive to the date the industrial waste dischargers change took place.

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APPENDIX E

ANNUAL FEE ADJUSTMENT FORMULA

$$AAF = AFo \times C/Co$$

where:

AFo = Annual Fee (current year)

AAF = Adjusted Annual Fee.

Co = Consumer Price Index for All Urban Consumers (Northeast Region) as published by the U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report for the twelve month period (Jan-Dec) of the previous year.

C = Consumer Price Index for All Urban Consumers (Northeast Region) as published by the U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report for each twelve month period (Jan-Dec) immediately preceding each and every anniversary of the effective date hereunder.

This formula will be used whenever the CPI-U is a positive value. There will be no fee adjustment if the CPI-U is 0.0% or a negative % value.

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APPENDIX F

INSURANCE COVERAGE

Pursuant to the terms and conditions of Article 17 herein,

SEVERN TRENT SHALL MAINTAIN:

1. Statutory workers compensation for all of SEVERN TRENT's employees at the Project as required by the State of New York.
2. Commercial General Liability Insurance, including contractual liability, with a limit of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate; and
3. Automobile Liability Insurance with a combined single limit in the amount of one million dollars (\$1,000,000).

The CITY shall be named an additional insured under such policy at all times as this Agreement is in effect except to the extent that any claim or loss is due to the CITY's fault or negligence and, in the event of joint fault or negligence, except to the extent of the loss attributable to the CITY's proportionate degree of fault or negligence.

CITY SHALL MAINTAIN:

1. Statutory workers compensation for all of CITY's employees at the Project as required by the State of New York.
2. Property damage insurance for all property including vehicles owned by CITY and operated by SEVERN TRENT under this Agreement. Any property, including vehicles, not properly or fully insured shall be the financial responsibility of the CITY.

SEVERN TRENT will provide at least thirty (30) days notice of the cancellation of any policy it is required to maintain under this Agreement. The CITY and SEVERN TRENT may self-insure reasonable deductible amounts under the policies they are required to maintain to the extent permitted by law and only if such action does not invalidate the property insurance of either party.

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RESOLUTION NO.: 227 - 2013

OF

OCTOBER 28, 2013

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH,
NEW YORK SUPPORTING "PROJECT I AM"**

WHEREAS, "Project I Am" is an initiative to introduce and encourage universal values by building upon a community's vision of love, respect and safety, producing a spirit of pride; and

WHEREAS, this Project is sponsored by faith-based, not for profit communities; and

WHEREAS, the Project will promote principles and values that the entire community can use to encourage and teach our children; and

WHEREAS, adults can apply to be great mentors and examples to encourage more unity and collaboration between the schools, churches, service clubs and businesses for a common good of the community; and

WHEREAS, the goal of the Project is for all organizations to embrace the idea of teaching, modeling, discussing and sharing in their lessons, sermons, meetings and places of business; and

WHEREAS, this Council has determined that supporting the efforts of the participants in "Project I Am" is in the best interests of the City of Newburgh and its residents and youth alike;

NOW, THEREFORE, BE IT RESOLVED, that this City Council of the City of Newburgh, New York does hereby support "Project I Am" with thanks and gratitude.

Mayor Kennedy said that this is a sub project under a bigger project called "Project Love" which is a group of people coming together to try to find a common way to support the City. "Project I Am" is the idea of having Faith Based Leaders, Businesses and Schools leveraging and coming together to find a way to bring the community together to support common values that everyone can stand on. There will be posters put up and they would like to

make t-shirts stating "I Am Newburgh". It is an opportunity to build pride and community spirit and this resolution just states that the City Council supports this.

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

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

ADOPTED

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

PUBLIC COMMENTS REGARDING GENERAL MATTERS

Omari Shakur, City of Newburgh, said that we are trying to get a new City Manager here so he wants to know what happened to the investigation regarding Mr. Herbek and the allegations of extortion, drug use and prostitution. There was blackmailing going on too so the next City Manager will think that he can do whatever he wants. They have been talking about interaction between the community and the Police Department but what happened to the cameras? There were supposed to be cameras so why can't they put them on the cars because the community has a side and the police have a side but the cameras will tell the truth. The cameras can see what is going on. This was brought to his attention because Ms. Lembhard was on her porch with family members talking to a Councilwoman and a police vehicle drove by and gave her the finger. There is no accountability or responsibility in this City so when are we going to start getting some accountability?

Councilwoman Lee asked Ms. Lembhard if that was the day she was speaking with her.

Ms. Lembhard responded that it was.

Councilwoman Lee said that she thought they meant that they did that in the past.

Patrick Berardinelli, Sr., Orange County Legislator, said that he represents Wards 3 and 4 in the City of Newburgh as well as Districts in the Town of Newburgh. He wished to talk about a resolution that he is working on that has already been approved by the County and the Town of Newburgh. A resident in the City of Newburgh on Dupont Avenue brought to his attention concerns about people going through a Stop Sign. He contacted the Mayor and the Police Chief and discussed it with them and came up with some of the laws in the City and the State that are not beneficial to the City of Newburgh. One of those laws is the "Red Light Camera Law" which states that any Municipality with a population of one million or more can install surveillance cameras. We are never going to reach that amount but in the interim he plans on reaching out to the Governor and Assembly to let them know that we need a change to that law.

Mr. Berardinelli asked Councilwoman Lee if he was interrupting something.

Councilwoman Lee responded that he is.

Mayor Kennedy stated that he has his three minutes. What is he interrupting?

Mr. Berardinelli said that when people try to do something for the City of Newburgh they should at least be given the courtesy of the three minutes if nothing else.

Councilwoman Lee told him that he has his three minutes but they had asked the Mayor not to invite him here. He is a Legislator running for Office so this is nothing more than campaigning.

Mayor Kennedy said that this is out of line. He has a right to say anything he chooses just like anybody else in the audience.

Councilwoman Lee told the Mayor not to e-mail them and ask them next time because three of the Council said "no".

Councilman Brown said that they didn't say "no" and asked that his three minutes be started over to allow him to continue.

Mayor Kennedy said that she was asked not to put this on the Agenda because it was a campaign issue so she agreed to take it off the Agenda but Mr. Berardinelli has a right to speak for three minutes as part of the general comments. He is not interrupting anything.

Councilwoman Lee said that they asked to have this presented to them after the Election.

Mayor Kennedy responded that he will do that but he can say anything he wants at this period of time.

Councilwoman Lee said that she is right.

Mr. Berardinelli continued by saying that residents on Dupont Avenue brought to his attention this serious problem and it is his responsibility as a Legislator to review, evaluate and determine if there is anything they can do for the community. He doesn't know if they will get approval for these cameras to be installed in the City of Newburgh but they can put up signage to show that they are respectful of these concerns. As far as this being a political ploy, he went out and obtained seven hundred signatures and nowhere on the Petition does it ask what Party a person belongs to, what Race they are or what Church they attend. With the assistance of the Council he wanted the City of Newburgh to be the model of what they can do with these cameras. He was hoping for at least a phone call from the City Council members asking what

they could do to help because this is something that's good for the City of Newburgh.

Mayor Kennedy apologized for the behavior of this Council and for the rudeness of interrupting a speaker. She asked Mr. Berardinelli to accept her apology on behalf of the Council. She added that this is an issue near and dear to heart and she will do everything she can to help get these cameras in the City of Newburgh. We are thirty years behind the curve as they have been installed in other cities all around the Country. Small cities are more pressed with finances and we can't afford to have a Police Officer on every corner so we need to have surveillance for both Stop Lights and speeding because we have to make this city safer. She noted that she will support this and they will work collaboratively across the party lines to get this done.

Mr. Berardinelli said that if he has an opportunity to come before the Council at a Work Session he would like to talk about their right as a City to apply for Home Rule Legislation.

Councilman Brown thanked Mr. Berardinelli and said that he supports him. Red Light Cameras can not be a bad thing. A bad thing would be if your child or family member is killed by someone running a Stop Sign or red light.

Tammie Hollins, City of Newburgh, said that a comment was made by Mayor Kennedy at the last meeting regarding the Youth Empowerment Center and that she didn't know what she was talking about. She sits on the CDBG Committee and HUD regulations state that administrative fees should not exceed fifteen percent. On the YEC Program, which is under the CDBG Anti Gang and Violence Grant, they were granted \$5,000.00. The stipends or salaries are \$18.00 for the Director, \$15.00 for the Assistant Director which has not been filled, \$14.00 for security and maintenance for someone who is a close affiliate and friend of the Director and \$12.00 times two for the Tutors. Out of the \$5,000.00 that was granted for YEC through the CDBG Anti Gang and Violence Grant, \$4,000.00 plus is going towards salaries or stipends and less than \$1,000.00 is going towards supplies and \$1.00 for yearly rent. Since she sits on the CDBG Committee she should know, as she is sure they would want her to know, what she is talking about. She added that she knows the City Manager was doing an Audit on the Activity Center and she would like to know what other departments are being Audited and will they be posted for the public. Lastly she heard Mayor Kennedy and Councilman Brown state that they are supporting the Red Light Cameras and a few times she mentioned that on Lander Street and Broadway there is a Stop Sign where you can't see the oncoming traffic because of parking on Broadway and this is just an accident waiting to happen. When they are considering those lights she hopes they consider that intersection.

Janet Gianopoulos, City of Newburgh, said that regarding child safety and Stop Signs it seems that we have the possibility to have cameras at Stop Signs if warranted. We also can put up signs stating "Children At Play" and such so she thinks they need to stop getting caught up in the heat of the moment and look at the issues. Are our children safe? Is there a safety problem regarding Stop Signs and children skateboarding down the middle of Broadway? Red lights can be very expensive but signage could work also and they should definitely not be playing in the middle of Broadway.

Barbara Smith, City of Newburgh, asked for how many years have they sat and talked about what our County Legislators do not do for us. We have always asked for help so when we have a Legislator come to try to help this City and we turn him down, whether he is or is not running for office is not important. What is important is what he is trying to bring to this City. Why would we want to inhibit our Legislators from helping this City when we need so much help? She asked if we can act like we care for this City and not just playing a game of politics.

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

COMMENTS FROM THE COUNCIL

Councilwoman Angelo told Roxie Royal that they received a draft from Community Development and they are going to be doing something for the skateboarders in 2014. She added that the Citizens Advisory Committee will be meeting on Thursday night at 7:00 p.m. so maybe Legislator Berardinelli would like to stop by. The new Principal from the High School will also be speaking that night and one of their members is turning eighty years old so they are going to have a little surprise party for her. She added that she has been campaigning in the City and if anyone wants to know what their City looks like they should walk with her. The sights and sounds that you see don't matter what part of the City you are living in. She went to a house in Rolling Hills that was littered with bags of garbage and a ferocious dog was in the house. She doesn't know if the house was abandoned so she reported it to Code Compliance but she hasn't heard back yet. Today she noticed on one of the side streets that it looked like someone was evicted or dumped a truck load of furniture and mattresses on the street. She noted that her daughter is on the mend so she thinks that the power of prayer has helped her.

Councilman Brown said that if anyone knows someone who has applied for the Police Exam in November tell them to study for that exam. In order for someone to be chosen in the first round they have to have a good score. It is not done by race it's done by scoring. Everyone has to study. There are tutorials on the website so they need to do whatever studying they have to in order to get a high grade on that exam. Secondly he wanted to apologize to Councilwoman Angelo if his analogy earlier offended her. It wasn't meant to offend her; it was meant to make a statement. He added that there is an Election coming up on November 5th and there are four seats on this Council. The two that he wants to talk about are Wards 3 and 4. We have Democratic Candidate Cindy Holmes running in t Ward 4 and there were a lot of naysayers claiming that she wouldn't win and should drop out. As you can see, one vote determined that Ward and she won the Primary. Since she won he wants all Democrats to support her in the upcoming Election on November 5th because the people have spoken. He said that he is not a politician, per se, but when he sees things happening at this table that affect how this Council votes he has to step in and try to make whatever difference he can. In Ward 3 he is going to endorse John Giudice. He loves Councilwoman Angelo to death but it seems to him that her vote has been compromised and is no longer her own vote. He needs someone to vote on their own accord so he thinks that her time and effectiveness has run its course and he can endorse whoever he wants to endorse so he endorses John Giudice for Ward 3. He told his supporters in Ward 3 that he is endorsing a Republican so when they go to the Polls they should vote Republican in Ward 3. He wished everyone a good night.

Mayor Kennedy said that they need to leave politics out of this meeting.

Councilwoman Lee said she met Councilwoman Angelo a few Saturdays in a row planting flowers and now that we are campaigning from the floor she noted that it is so important that they leave this Council Chambers up to the legislative business. She doesn't talk about her business here and she doesn't appreciate being told that her decision is based on something she wants for herself and not for the City residents. She noted that Councilwoman Angelo makes sure each year that the children, who everybody talks about, have toys for Christmas. She feeds the hungry not just in her Ward but in the whole City and she is responsible for all of the beautification. It takes everyone on the Council to make this City work and some people go above and beyond the call of duty which Councilwoman Angelo has done. We have the International Festival, plants, flowers and all sorts of things and if that doesn't mean anything to you just take five minutes to think of life without it. She doesn't know anybody else who will go out and look for a Christmas Tree because some child whose parents don't have enough money to buy a Christmas Tree believes in Santa and believes that Santa is going to give them a toy. Councilwoman Angelo makes that kind of stuff happen. The City is clean because in many cases Councilwoman Angelo has harassed George Garrison about cleaning specific places so that it will look nice. When you go to the Waterfront and see the Monuments guess who put the flowers around them. Those are the things that we have in this City because of Councilwoman Angelo and whether you support John Giudice or not doesn't matter to her. What matters is when you look around this City you know who is doing what and you give people respect and credit for what they have done. Part of the problem here is that we are not looking at people for what they do and for what they have done. We are making an assumption that a few loud mouth people know what is best for the City. We are making the assumption that sitting in the audience and being insulting is alright. No longer is it going to roll over like that for her because if you are insulting then you are insulting and that's it. Complaining about the Police and our children what happened to Michael Lembhard was very sad and unfortunate but there are some kids in this City who carry bigger guns than the Police and the Police are not killing us as fast as we are killing each other. They are not shooting at us as much as we are shooting at each other. If we are going to start talking about non-violence and making the City a better place we have to get real honest with what we are doing. Councilwoman Angelo keeps the City clean. Some people will walk out of this meeting throw their garbage in front of City Hall and keep going.

Words were exchanged between Councilwoman Lee and Omari Shakur and Mr. Shakur was removed from the Council Chambers.

Councilwoman Lee told Mayor Kennedy that she let that go on too long and she doesn't have to have that. Her point is that this is not the place to campaign but we also have to give people the credit that they deserve. Councilwoman Angelo sees to it that every one of these kids that people talk about has Christmas and that there is something going on for Thanksgiving. Some families get food, some get toys and the City looks good. She said that she doesn't support John Giudice. She supports anyone who is going to do something for this City.

Mayor Kennedy said that there are a lot of people doing a lot of good things in this City and she is thankful and grateful for all of it. She wished to give a commendation to Living in Jesus Ministry for their cleanup on South Street. They are looking at starting to Adopt-A-Block and she wanted to encourage other Organizations to adopt an area in the City and take it under control. They are going to do it once a month and she is grateful for what they are doing. She noted that General Petraeus is going to be at the Newburgh Armory to speak about education on Thursday, October 31st at 11:00 a.m. celebrating a vision of unity through education. The Newburgh Business and Professional Association is sponsoring a Holiday decorating contest downtown to bring more festivity to our businesses and She would like to congratulate them for what they are trying to do. She said that she has no idea where any investigations are with Mr. Herbek but she thinks that someone actually has to prosecute for that to happen. In regard to CDBG, she wanted to clarify that when you talk about wages the administrative wages are for the overall program. People who are doing education and interacting with the youth such as Teachers, Counselors and Tutoring is not considered interactive put program. Secondly she doesn't think that anyone is getting paid anything because they have mostly been donating their time. If they are directly related to the Program that is one kind of salary and administrative overall is a different kind of salary. She congratulated the Fire Department and the Land Bank. Everyone is going to hear some great news about the Land Bank tomorrow so stand by. They just received a really big grant which will help launch us forward.

There being no further business to come before the Council, the meeting was adjourned at 8:45 P.M.

LORENE VITEK
CITY CLERK