

COMMON COUNCIL MEETING

September 18, 2012

7:00 P.M. Call Meeting to Order
Salute to the Flag of the United States
Public Comments
Minutes of September 4, 2012
Bills
Proclamation
PINK SHEET Sign off

AGENDA:

1. Presentation on self-insured healthcare by Brian Duffy, Duffy Associates.
2. Consideration of a Resolution to authorize and direct Brian Tobin as Mayor of the City of Cortland, to file an application for funds from the New York State Department of Transportation under the Safe Routes to School Program, in an amount not to exceed \$500,000, and upon approval of said request to enter into and execute a project agreement with the State for financial assistance to the City of Cortland for the Barry School Safe Routes to School Project subject to review by Corporation Counsel. (Thoma Development)

3. Consideration of a Resolution to approve a budget modification to appropriate auction proceeds from the sale of ten vehicles from the City of Cortland Police Impound Lot which included a: 1996 Toyota, 1989 Honda, 1995 Buick, 2001 Chevrolet, 1999 Chrysler, 2000 Dodge, 1999 Honda, 1999 Chrysler, 2005 Dodge and a 2004 Chevrolet for a total of \$1,916.00, toward the purchase of new police vehicles in 2013 as follows: (Deputy Chief Sandy)

A1325-41401 Impound Lot	\$1,500.00
A3120.206.00 Operational Equipment	\$ 416.00

4. Consideration of a Resolution to approve a budget modification to recognize the proceeds from the sale of the City of Cortland Fire Department's 1988 Hahn Engine to the Cincinnatus Fire District in the amount of \$25,000 and to appropriate those funds as follows: (Chief Glover)

A3410.402.00 Apparatus Maintenance and Repair	\$20,000.00
A3410.405.00 Professional Services	\$ 5,000.00

5. Consideration of a Resolution to authorize the Mayor to sign and submit an application on behalf of the City of Cortland to join the Tompkins County Healthcare Consortium subject to review by Corporation Counsel. (Mack Cook)

Executive Session

Mortgage Lien Release Request

6. Consideration of a Resolution to authorize the Mayor to sign a Release of Mortgage Lien for a deceased Community Development Program participant. (Mayor Tobin)
7. Discussion of a lease of the Rosen Superfund Site to the New York, Susquehanna and Western Railroad Central New York Railroad for an offloading facility and to schedule a Public Hearing for 6:30 PM, October 2, 2012. (Mack Cook)



City Council Minutes The City of Cortland September 4, 2012

Council Meeting #16
September 4, 2012
Public Hearing and Regular Session
City Hall
6:40 PM

Present: Mayor Tobin, Aldermen Bird, Silliman, Dye, Bennett, Quail, Ferrer, Ferguson and Michales

Staff Present: Corporation Counsel Kelly Colasurdo, Director of Administration & Finance Mack Cook and City Clerk Judith Chamberlin

Public Hearing

Mayor Tobin opened the Public Hearing on Local Law No. 1– Rental Registry Permit Law Amendment at 6:40 PM.

There was no one to speak and Mayor Tobin closed the Public Hearing.

Regular Session

Mayor Tobin called the sixteenth Common Council meeting of the year to order at 7:04P.M.

PLEDGE OF ALLEGIANCE

Public Comment

Our speaker tonight is Anne Doyle. She noted that the past weekend was the first weekend of having our students back. The first night was very nice; the students were cooperative, respectful, and reasonably quiet. On the other night, not so good. She wished to thank the Police, the officers in charge and especially Officer Slater, Officer Moen and Officer Becker. Working together as a neighborhood, working with the students is making things run much smoother.

Secondly, Ms. Doyle wanted to wish Cheryl Massmann, the Deputy City Clerk good luck in her retirement.

Resolution # 163 of 2012 - Minutes of August 21, 2012. as amended.

Alderman Ferguson noted that she would like to see more of the positive comments noted in the minutes regarding Resolution # 160 and asked that the minutes be amended.

By: Alderman Ferrer
Seconded: Alderman Silliman
Approved: Ayes - 8
Nays - 0

Bills were reviewed. No comment.

Ward Reports

Ward 4 – Alderman Bennett

Alderman Bennett noted the students are back, Cortland is back in full force so he encouraged everyone to please drive careful. The walk through between Pearl and Warren is closed, reducing the foot traffic and parking has dropped considerably. In the future we will discuss closing the small section at the dead end.

Ward 8 – Alderman Michales

Alderman Michales stated one item he wanted to mention was that an American flag was stolen from his ward. An arrest was made and the flag was returned to its owner. He thanked the Police department for their assistance.

Ward 1 – Alderman Bird

Alderman Bird had nothing to report.

Ward 3 – Alderman Dye

Alderman Dye did a ride along with the Police Department the night of the concert on Main Street, and everything went very well. It was a nice, well managed event, everything was clean by midnight. The Police Department did a very good job.

Ward 2 – Alderman Silliman

Alderman Silliman regretted that she missed the Main Street event. She apologized to the students at Parker School and the residents on Madison Street because of NYSEG working there and traffic is being interrupted. The work should be done in two weeks.

She spoke to Chris Kredich who is the SUNY representative, Mike Collins replacement. She hopes he will attend the Housing Committee meeting on Wednesday at 7:00 PM. She would hope to address the noise and foot traffic in the College area. She stated that Ann Doyle's suggestion was a great idea, that residents in her ward should get out and meet their student neighbors during the day and get to know each other.

Ward 7 – Alderman Ferguson

Alderman Ferguson expressed concern in her Ward regarding residents walking their dogs and allowing them to deposit waste without bringing along a bag to clean up the mess. Dog walkers need to be more considerate of their neighbors.

Ward 6 – Alderman Ferrer

Alderman Ferrer had nothing to report.

Ward 5 – Alderman Quail

Alderman Quail stated that his Ward had two Neighborhood Watch meetings over the past few weeks. A walk is scheduled for September 15th and the next meeting will be on September 20th. He encouraged people to be alert and pay attention with school starting. He confronted a driver of a car which was parked across the sidewalk, and the driver appreciated his concern.

Mayor's Report

Mayor Tobin concurred that the concert on Main Street went very well, it was well attended, and proper arrangements were made for setting up and taking down. He was very impressed with the organization Chris Merkley and Adam Megivern put forth for the event.

The Mayor had a meeting with the County regarding the details of the interoperable radio system and the details are being worked out. Concerns were expressed about the contract being put forth and the County is addressing those concerns.

Several labor negotiations are ongoing. The City has five labor unions to negotiate this year.

The County had an informational session regarding the Chesapeake Bay Initiative. It will potentially impact Waste Water and farmers.

Along with Alderman Silliman we met with Chris Kredich who will be dealing with a lot of the off campus issues.

The Mayor reported the kick off meeting was held a number of weeks ago regarding the Gateway Project, off Route 81 near Exit 11.

September 15th our Police Department and our Fire Department will have a competition soft ball game at Testa Park, an exhibition of some friendly rivalry.

AGENDA

Item No. 1 – Presentation by ADT on a proposed video surveillance system for Main Street.

Deputy Police Chief Paul Sandy explained that security in the downtown area has been an issue for some time, especially since the assault on Main Street. Eric Gilbert from Rochester, Ron Zoll from Syracuse and Mike Driscoll came from Boston, Massachusetts to assist in this presentation.

Eric Gilbert is with ADT , Mike Driscoll is from DVTEL. Mr. Gilbert has been working with Deputy Chief Sandy for several years on the video system the Police Department has now. The system in discussion is expandable, can be monitored from inside the squad car. It is not a replacement for law officers, but merely a deterrent.

Mike Driscoll gave a history of his product and an example of where the system has been installed and has made a huge difference. He showed how the system actually works, showed live video of the camera in action.

Alderman Silliman asked about the need to update the system at any point. The software and hardware that runs computers for years is the same software that runs the video cameras. A direct advantage to video surveillance cameras is behavior change. The cameras can be moved from one location to another and are fairly indestructible.

Alderman Michales asked about the ability to zoom. Mr. Driscoll demonstrated live how well the camera can zoom in, how clear the video is even in the dark. He answered several questions from various Aldermen about the cost, capability, and infrastructure and was very informative about the whole system. Video may be streamed directly to the Common Council members on their I pads.

Alderman Dye noted the City of Rochester has had a surveillance system for a couple of years now and he made the point that Rochester has made 1.8 million dollars so far, illustrating how the system can pay for itself.

Mayor Tobin suggested if any questions arise, to contact your Alderman for updated information on the progress. Deputy Chief Sandy has put a lot of work into this project and the Council is very impressed.

Item No. 2 - Presentation by Access to Independence, YWCA and Family Counseling Services regarding the Cortland Community Mentors Program.

Mayor Tobin had the opportunity to meet with one individual from each of the three groups. They are looking for volunteers and the Mayor thought bringing it to the Common Council would get the idea out to the public.

Aaron Baier from Access to Independence was present to speak. The aim of the Cortland Community Mentors Program is to expand and strengthen the pool of qualified mentors in our community. SUNY Cortland provides some of their students as mentors, but they can typically can only work spring and fall semesters. We seek men and women in the community, but right now there is a significant need for male role models.

Sara Earl stated that the Y has 38 young boys right now waiting for a male role model, someone to take them fishing, take them to the park, or just listen to them.

Mr. Baier pointed out the fact that mentoring typically extends a year or more to be effective and the college students tend to leave to go home, leading to more abandonment issues. He urged people to talk about mentoring with friends and coworkers. He also suggested ways for local businesses to involve themselves by offering small incentives to qualified mentors and their mentees. Brochures were distributed for more information.

Item No. 3 – Presentation by Garry VanGorder, Executive Director IDA/BDC, on the marketing and sales plan for the Buckbee Mears site.

Mr. VanGorder noted that Buckbee Mears is a 74 acre site in the City of Cortland. Various companies have occupied the facility which is now abandoned, leaving behind a slew of caustic chemicals in the piping system throughout the facility and in storage tanks. DEC got involved as did the EPA and identified it as a superfund site and ordered a clean up back in 2006. Clean up was completed in 2009. There are more than 29 million dollars in liens against the property, including about a million dollars due to the City. The property has been vandalized, had fires set inside and other issues.

Since Mack Cook has been the City's Director of Administration and Finance, and Mayor Tobin joined the effort to move forward the IDA has seen rapid progress, thanks in large part to Mack Cook's work with the EPA attorneys and therefore through the Bank of India.

The IDA has identified a way out – the Bank is now interested in reinvigorating its foreclosure process and we are working toward a foreclosure sale sometime in the coming months. Town of Cortlandville and other lien holders have agreed to accept the payback agreement so in the event the Bank does sell the property, at least the lien holders will recover some of what is owed. If the property does not sell, the City then has the option of taking over the site for its tax lien, thus paying a portion back to the EPA.

Alderman Michales question the waste water treatment facility there on the site and whether it might be put back on line.

Mr. VanGorder responded that Bruce Adams from the City Waste Water Department and his team did an assessment and determined that it was pretty rough – after several acts of vandalism every piece of copper is gone. That may not be the case for the sub station.

Alderman Silliman asked about cost to the City to replace the rails and prepare the site for sale and if the site was totally cleaned up.

Mr. VanGorder responded that a plan is in place to improve the chance of selling the site and although there is still some chromium under the pads of the buildings, the EPA determined it is not a mobile compound.

Item No. 4 – Presentation of the State Comptroller's 2012 audit reports (Mack Cook)

Mack Cook noted the report is on line on the City's website and the State Comptroller's website. It is still a work in progress, we are not there yet but the report states we have built internal controls and reporting controls and captured about 94% of our finances.

Mayor Tobin praised Mack Cook for all his hard work and noted that the initial audit two years was very critical. The more recent audit is still critical, but we want to know where our weaknesses are in order to continue to work on them. The new accounting software will make a significant difference.

RESOLUTION #164 of 2012– Resolution to designate the Common Council as Lead Agency for the Local Law No. 1 of 2012 – City of Cortland Rental Registry Permit Program Amendment – SEQRA process.

By: Alderman Silliman
Seconded: Alderman Ferrer

Approved: Ayes – 8
Nays – 0

RESOLUTION #165 of 2012 – Resolution to issue a negative declaration and that the Mayor shall sign the short form SEQRA so indicating a negative declaration relative to this Local Law No. 1 of 2012 – City of Cortland Rental Registry Permit Law Amendment.

A short form SEQRA review was done; a negative declaration was found and signed by the Mayor.

By: Alderman Ferrer
Seconded: Alderman Bennett

Approved: Ayes - 8
Nays – 0

RESOLUTION #166 of 2012 – Resolution to adopt Local Law No. 1 of 2012 – City of Cortland Rental Registry Permit Law Amendment.

Mayor Tobin noted there have been five public hearings so he believes all concerns have been addressed and received much feedback.

Alderman Bennett expressed his gratitude to all those involved in getting this done, from Mack Cook , the Housing Committee and anyone else who had a hand in it. All the work put into it is greatly appreciated.

By: Alderman Silliman
Seconded: Alderman Bird

Approved:
Role Call Vote: Alderman Bird – Aye

Alderman Silliman – Aye
Alderman Dye – Aye
Alderman Bennett – Aye
Alderman Quail - Aye
Alderman Ferrer – Aye
Alderman Ferguson – Aye
Alderman Michales – Aye

Approved: Ayes – 8
Nays – 0

RESOLUTION #167 of 2012 – Resolution to adopt a City of Cortland Computer Use Policy. (Mack Cook)

Mayor Tobin noted that each Council member was given a copy of the policy which every City employee who uses a computer must sign.

By: Alderman Ferrer
Seconded: Alderman Silliman

Approved: Ayes – 8
Nays - 0

RESOLUTION #168 of 2012 – Resolution to lift the hiring freeze to fill the budgeted, but vacant position in the Police Department. (Chief Catalano)

Alderman Michaels asked if this was the same position discussed at the last Common Council meeting.

Chief Catalano responded that it was. The position has been vacant more than a year and a half.

By: Alderman Silliman
Seconded: Alderman Ferrer

Approved: Ayes – 8
Nays – 0

RESOLUTION #169 of 2012 – Resolution to recognize fourteen (14) donations totaling \$2,420.00 submitted to the Youth Bureau for the Wickwire Pool Trust Fund. (John McNerney)

By: Alderman Bennett
Seconded: Alderman Michales

Approved: Ayes – 8
Nays – 0

RESOLUTION #170 of 2012 – Resolution to close Court Street from the Alliance Bank parking lot driveway to Church Street on Saturday, October 6, 2012, from 9:00 AM to 8:00 PM for Pumpkin Fest activities and the Cortland Fire Department’s Annual Open House, Annual Inspection and Annual Memorial Service. (Chief Glover)

Chief Glover was present to answer any questions.

By: Alderman Ferrer
Seconded: Alderman Bird

Approved: Ayes – 8
Nays – 0

Mayor Tobin said the agenda item was changed from a resolution to a discussion, recommended with Council approval.

Item #10 - Discussion regarding the adoption of a single comprehensive fee schedule for the City Code Division. (Chief Glover)

Chief Glover explained that over the years his office has tried to remove set fees from the City Ordinance and get them adopted by resolution through Common Council. In order to change a fee, the City would need to change the Local Law. The fees are scattered all through the City Ordinance, making it very difficult to locate specific fees passed by Common Council. Shelley Knickerbocker of the Code Office would always have to search through years of resolutions passed by Common Council. The purpose of a comprehensive fee schedule would allow our office to look up any fee on a single sheet of paper. In the process descriptions were more accurately defined.

Alderman Quail asked if the City might want to put this document on the City’s website, to which the Mayor agreed would be a good idea. The Council would like to have some time to examine the idea and discuss it with residents to get some feedback.

Item No. 11 – Discussion regarding the adoption of a Common Council Code of Ethics concerning Common Council members’ responsibility to office and to amend the City Charter. (Alderman Bennett and Alderman Michales)

Alderman Dye questioned what would be proper protocol in the case of a Council member suddenly being taken ill or some other unforeseen event.

Alderman Michales suggested if a member of the Council was not going to be available for a length of time, the Mayor and/or Common Council should be notified.

Alderman Bennett felt that Council members are elected officials, there to carry out a duty and have an obligation to serve their respective wards.

Should someone miss five consecutive meetings, it may be time to replace that person. Any resolution must have at least six members present to vote.

Alderman Ferguson noted that as it stands, a Council member cannot be forced to step down. She wondered if in the future the Council found themselves in another situation like last year, what options might be available.

Alderman Dye questioned some of the wording in regards to consistent absenteeism.

Kelly Colasurdo, Corporation Counsel, clarified what was written. Should a member of Common Council be consistently absent, the Mayor shall appoint a committee to decide what action to take. In the Mayor's absence, the Deputy Mayor would appoint that committee.

Alderman Ferguson stated that she felt uneasy with the idea that an Alderman could be discharged with no input from that Alderman's own constituents.

Mayor Tobin suggested that the policy include the option for an Alderman who has been removed, to be given a number of days to get a significant number of signatures on a petition indicating a preference to keep that Alderman, at which point it would then go to recall vote.

Alderman Bennett noted that the law is very liberal in regards to a person's legal address. However, if an Alderman is obviously not residing in their ward, for whatever reason, and not staying in contact with his or her constituents, the Council should be allowed to make a decision.

RESOLUTION #171 of 2012– Confirmation of the Mayor's appointment of Joyce Nadge as the Local Registrar of Vital Statistics for the term September 5, 2012 to December 31, 2012. (Judith Chamberlin)

By: Alderman Quail
Seconded: Alderman Bennett

Approved: Ayes – 8
Nays – 0

Adjournment:

By: Alderman Ferrer
Seconded: Alderman Silliman

Approved: Ayes – 8
Nays - 0

I, JUDITH CHAMBERLIN, CITY CLERK OF THE CITY OF CORTLAND, NEW YORK DO HEREBY CERTIFY THAT SAID RESOLUTIONS WERE ADOPTED BY THE COMMON COUNCIL AT A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY OF

CORTLAND, HELD ON THE 4th^t DAY OF SEPTEMBER, 2012. I FURTHER CERTIFY THE FOREGOING RESOLUTIONS WERE PRESENTED TO THE MAYOR IN THE TIME REQUIRED FOR HIS CONCURRENCE IN ADOPTION OR REJECTION BY VETO POWER.



JUDITH CHAMBERLIN, CITY CLERK

MAYOR TOBIN

ABSTRACT OF AUDITED VOUCHERS, TO BE PAID OCTOBER 01, 2012

CLAIMANT	DESCRIPTION	CODE NUMBER	VENDOR #	AMOUNT	TOTAL
MAYOR					
STEVEN RHEA	GROCERIES FOR YOUTH COUNCIL	A-1210-403-00	52300	\$14.87	
STEVEN RHEA	MAYOR'S YOUTH COUNCIL MTG.	A-1210-403-00	52300	\$35.00	
THE PICTURE HOUSE	FRAME - PAMELA BARDEN	A-1210-403-00	62645	\$32.91	\$82.78
FINANCE					
STAPLES	COMPUTER SUPPLIES	A-1325-403-00	58475	\$49.84	\$49.84
ASSESSMENT					
DAVID BRIGGS	CONTRACT - OCTOBER	A-1355-415-00	6830	\$1,600.00	\$1,600.00
CITY CLERK					
CORTLAND STANDARD	LEGAL ADS	A-1410-405-00	15400	\$102.93	\$102.93
BUILDING AND GROUNDS					
CORTLAND COUNTY HIGHWAY	FUEL - AUGUST	A-1620-405-00	13300	\$128.68	
ROMER & SONS	3RD FLOOR BATHROOM -CITY HALL	A-1620-405-00	34600	\$105.79	
AMES LINEN	KWIK WASH	A-1620-405-02	2500	\$106.00	
AMES LINEN	MAT RENTAL	A-1620-415-00	2500	\$76.90	
JMS PLUMBING	SNAKE LINE - POLICE	A-1620-415-00	31960	\$119.77	
THYSSENKRUPP	CONTRACT - ELEVATOR MAINT	A-1620-415-00	18515	\$1,016.73	\$1,553.87
CENTRAL SERVICE					
EASTERN COPY PRODUCTS	COPIES - MAYOR	A-1670-415-00	19375	\$25.15	
EASTERN COPY PRODUCTS	COPIES - FINANCE	A-1670-415-00	19375	\$35.43	\$60.58
UNALLOCATED INSURANCE					
MCNEIL & CO.	INSTALLMENT # 4	A-1910-400-00	40007	\$3,934.00	
MCNEIL & CO.	INSTALLMENT # 4	A-1910-400-00	40007	\$376.00	
MCNEIL & CO.	INSTALLMENT # 4	A-1910-400-00	40007	\$7,944.25	
THE PARTNERS	INSTALLMENT	A-1910-400-00	62633	\$25,485.00	\$37,739.25

ABSTRACT OF AUDITED VOUCHERS, TO BE PAID OCTOBER 01, 2012

CLAIMANT	DESCRIPTION	CODE NUMBER	VENDOR #	AMOUNT	TOTAL
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ANIMAL CONTROL

CORTLAND COUNTY SPCA	CONTRACT - OCTOBER	A-3510-415-00	13400	\$6,708.33	\$6,708.33
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DPW

CASELLA WASTESYSTEMS INC.	CONTRACT 08/01/12 - 08/31/12	A-8160-415-00	52201	\$23,599.49	
CASELLA WASTESYSTEMS INC.	FRONT LOADING	A-8160-415-00	52201	\$665.00	\$24,264.49

TOTAL				\$72,162.07	
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**City of Cortland,
New York**

PROCLAMATION

- WHEREAS,** the use of illegal and prescription drugs and the abuse of alcohol and nicotine constitute the greatest threats to the well-being of America's children;
- WHEREAS,** 17 years of surveys conducted by the National Center on Addiction of Substance Abuse at Columbia University (CASAColumbia) have consistently found that the more often children and teenagers eat dinner with their families the less likely they are to smoke, drink and use illegal drugs;
- WHEREAS,** frequent family dining is associated with lower rates of teen smoking, drinking, illegal drug use and prescription drug abuse;
- WHEREAS,** the correlation between frequent family dinners and reduced risk for teen substance abuse is well documented;
- WHEREAS,** parents who are engaged in their children's lives – through such activities as frequent family dinners – are less likely to have children who abuse substances;
- WHEREAS,** family dinners have long constituted a substantial pillar of family life in America;
- THEREFORE,** I, Brian Tobin, Mayor of Cortland, by virtue of the authority vested in me by the Constitution and laws of the City of Cortland in New York State do hereby proclaim the fourth Monday of every September as

Family Day – A Day to Eat With Your Children

and I urge all citizens to recognize and participate in its observance.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of Cortland, New York this 12th day of September.

Brian Tobin
Mayor of Cortland, New York

MEMO

TO: Mayor Brian Tobin and Common Council Members
FROM: Ann Hotchkin, Program Manager 
DATE: September 13, 2012
SUBJECT: Safe Routes to School Grant Application

The City of Cortland has an opportunity to apply for Safe Routes to School (SRTS) funds. The application is due on October 5, 2012. SRTS funding focuses on providing a safe biking and walking experience for children in grades K-8.

In speaking with Chris Bistocchi of the Department of Public Works, he recommended the area in and around Raymond and Delaware Avenues which are at the entrance to Barry School. Engineer Ken Teter has also looked at this area. We determined that most of the sidewalks at the site are too narrow (4' instead of 5'), they are in poor condition, the handicapped curb cuts are also in poor condition, and there is no crosswalk. Funds would be used from the grant to rectify all of these items, install a new curb cut on the east side of Delaware Avenue, and to install one or two permanent mounted speed monitors.

The minimum funding request is \$50,000 and the maximum is \$500,000. There is no match required on behalf of the municipality. The area we are targeting is depicted on the attached map. We have contacted the Cortland School District and the Cortland Police Department to ensure they concur with this project and to allow them needed input. The cost estimate is still being developed at the present time. I hope to give you an update on the cost on or before the next Council meeting.

At the Common Council meeting on September 18, 2012, we will be available to answer any additional questions you may have about the grant application. We will also be asking you to pass the attached resolution authorizing the Mayor to sign the application.

Please contact me at 753-1433 or ann@thomadevelopment if you need additional information.

MUNICIPAL LETTERHEAD

I, Judith Chamberlain, the duly qualified and acting City Clerk of the City of Cortland, New York, do hereby certify that the following resolution was adopted at a regular meeting of the Common Council of the City of Cortland held on September 18, 2012 and is **[incorporated in the original minutes of said meeting OR on file and of record]**, and that said resolution has not been altered, amended or revoked and is in full force and effect.

RESOLVED:

That Brian Tobin, as Mayor of the City of Cortland, is hereby authorized and directed to file an application for funds from the New York State Department of Transportation under the Safe Routes to School Program, in an amount not to exceed \$500,000, and upon approval of said request to enter into and execute a project agreement with the State for financial assistance to the City of Cortland for the Barry School Safe Routes to School Project.

[Signature of Clerk]

[Seal]

**Safe Routes to School 2012: Proposed Changes
Cortland, NY**





CORTLAND POLICE DEPARTMENT

2012 Impound Car Money Request



August 31, 2012

TO: Mack Cook, Director of administration & Finance
FROM: Deputy Chief Paul A. Sandy
RE: Request for Proceeds for Impound Scrap Money

POLICE VEHICLES:(A3120.206.00 account – Operational Equipment > \$5,000.00)

We are requesting the Common Council appropriate proceeds from the sale of ten (10) vehicles from the City of Cortland Police Impound Lot, which had been classified as abandoned in accordance to Section 1224 (3)(a)of the New York State Vehicle & Traffic Law. These vehicles included a: 1996 Toyota, 1989 Honda, 1995 Buick, 2001 Chevrolet, 1999 Chrysler, 2000 Dodge,1999 Honda, 1999 Chrysler, 2005 Dodge, and a 2004 Chevrolet. The total proceeds from the sale of these vehicles for scrap was \$1,916.00, which if appropriated will be directly applied toward the purchase of new police vehicles in 2013.

\$1,916.00

City of Cortland

8/23/2012	2.36	\$ 160.00	\$	377.60	2 cars
8/23/2012	2.81	\$ 160.00	\$	449.60	2 cars
8/23/2012	2.96	\$ 160.00	\$	173.60	2cars
8/24/2012	2.86	\$ 160.00	\$	457.60	2 cars
8/28/2012	2.86	\$ 160.00	\$	457.60	2 cars

Total \$ 1,916.00

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING



CONTENTO AUTO SALES, INC.
119 1/2 PENDLETON ST
CORTLAND, NY 13045-0588
(607) 753-8136

FIRST NIAGARA BANK
CORTLAND, NY 13045
50-7044/2223

13781

8/31/2012

PAY TO THE ORDER OF City of Cortland Police

\$ **1,916.00

One Thousand Nine Hundred Sixteen and 00/100*****

DOLLARS

City of Cortland Police

▲ TAMPER RESISTANT TONER AREA ▲

MEMO

Melissa M. Duga MP

⑈013781⑈ ⑆222370440⑆ 7900203105⑈

CONTENTO AUTO SALES, INC.

13781

City of Cortland Police

Date	Type	Reference	Original Amt.	Balance Due	8/31/2012 Discount	Payment
8/31/2012	Bill	scrap	1,916.00	1,916.00		1,916.00
					Check Amount	1,916.00

Checking

1,916.00

CORTLAND FIRE DEPARTMENT

BUDGET MEMORANDUM

DATE: 9/5/12

The Cortland Fire Department is in receipt of a check in the amount of \$25,000 for the sale of the 1988 Hahn Engine to the Cincinnatus Fire District. I am requesting the monies be appropriated as follows:

TRANSFERRED TO

ACCOUNT #: A3410-402 (Apparatus Repair and Maintenance)

AMOUNT: \$20,000

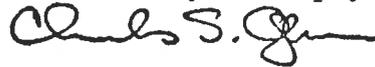
REASON FOR TRANSFER: To cover the cost of engine 202 major motor repair and any minor repairs to apparatus for the remainder of the year.

ACCOUNT #: A3410-415 Professional Services

AMOUNT: \$5,000

REASON FOR TRANSFER: The funds will be used to upgrade our fire reporting system to work with the City's new payroll system.

APPROVED BY: _____



Charles S. Glover, Fire Chief

2. Also at the time of acceptance of the applicant by Board resolution, the Board of Directors will determine the terms of assessing the pro-rata share of any surplus or deficit to the applicant at the time the applicant leaves the Consortium or upon dissolution of the Consortium. Said terms could include, but may not be limited to:

- a. The applicant contributing its pro-rata share of the existing fund balance on their effective date to bring them "on par" with the founding members' equity.
- b. The applicant paying its share of any deficit or being paid its share of any surplus that was generated during their years of participation. The Board of Directors would identify the surplus or deficit which exists on the date of entry and again on the date of withdrawal or dissolution and bill or pay the applicant accordingly.

now, therefore be it

RESOLVED, further, That Brian Tobin, Mayor is hereby authorized to execute an agreement with the Greater Tompkins County Municipal Health Insurance Consortium, effective as of _____(date of joining Consortium) for a period of at least 3 years,

RESOLVED further, That the Brian Tobin, Mayor is authorized to execute all related documents to complete the requirements to fulfill membership into the Consortium,

RESOLVED further, That Mack Cook, Director of Administration and Finance be hereby appointed to serve as a voting member on the Consortium's Board of Directors, and Paul Sandy, Deputy Police Chief shall serve as an alternate.

* * * * *

THIS AGREEMENT OF LEASE (the "Lease"), is made this ____ day of _____, 2012 (the "Effective Date"), by and between **THE CITY OF CORTLAND**, a municipal corporation of the State of New York, with offices at 25 Court Street, Cortland, New York 13045 ("Landlord") and **THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION**, a New Jersey Corporation, with offices at 1 Railroad Avenue, Cooperstown, New York 13326 ("Tenant").

WITNESSETH:

WHEREAS, Landlord owns certain lands and premises in the City of Cortland, County of Cortland, State of New York which are presently designated on tax maps of the County of Cortland as Block _____, Lots _____ (the "Land"); and

WHEREAS, the Landlord acquired the Land pursuant to a Trustee's Deed dated March 21, 2003 and recorded in the Cortland County Clerk's Office on April 28, 2003 as document 2009-01974, and said Trustee's Deed contains various covenants and restrictions relating to use of the Land (the "Deed Restrictions"); and

WHEREAS, Tenant is an interstate railroad that operates a rail line adjacent to the Land and wishes to develop and operate a rail transloading/unloading facility on a portion of the Land as shown on Exhibit A (the "Facility") in order to provide improved transportation service and alternatives to industry in the surrounding area; and

WHEREAS, subject to and conditioned upon receipt by Tenant of the approvals and permits described in Exhibit B (collectively, the "Operating Approvals"), Tenant desires to lease a portion of the Land and develop the Facility (which Facility and portion of the Land are collectively referred to as the "Leased Premises"), all in accordance with the terms and conditions hereinafter set forth and the consideration herein expressed;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that subject to the terms and conditions contained herein, from and after the Effective Date (as defined herein), Landlord does demise, lease and let unto Tenant and Tenant does rent and take from Landlord the Leased Premises as described in Section 1, and Landlord and Tenant do hereby mutually covenant and agree as follows:

1. LEASED PREMISES

1.1 On the Effective Date, Landlord shall deliver the Leased Premises to Tenant in an "as-is, where-is" condition, without representation or warranty of any kind, either expressed or implied, except as specifically provided herein.

1.2 The Leased Premises are leased or made available for use, as applicable, subject to: (i) the Deed Restrictions; (ii) easements, restrictions and other matters of record affecting the Leased Premises as of the date hereof; (iii) present and future legally applicable building and zoning laws, ordinances, resolutions, and regulations of any governmental or

quasi-governmental agency department or authority now or at any time having jurisdiction over the parties hereto, the Land and its use by Tenant pursuant to this Lease; (iv) any facts that may be revealed by an accurate survey of the Leased Premises; and (v) provided that none of the following interfere with, limit, inhibit, restrict or prohibit development or construction with respect to the Leased Premises as contemplated by this Lease, easements, restrictions and other matters affecting the Leased Premises or the Land that become effective following the date hereof.

1.3 Tenant agrees that, except as set forth in this Section 1, it shall have no other or further rights in any other portion of the Land, and Landlord may use all portions of the Land, other than those exclusively demised to Tenant, for any purpose determined by Landlord provided that such use by Landlord does not materially and adversely interfere with Tenant's rights as set forth in Sections 1.3 and 1.4 hereof.

2. TERM OF LEASE

2.1 Subject to the terms hereof, Landlord leases the Leased Premises to Tenant, for the term to begin on the date on which the Operating Approvals are issued (the "**Commencement Date**") and to end, unless sooner terminated pursuant to the provisions hereof, on the thirty-fifth (35th) anniversary of the Commencement Date (the "**Expiration Date**", the period from the Commencement Date through the Expiration Date, inclusive, being herein referred to as the "**Term**").

3. RENT

3.1 (a) For purposes of this Lease, "**Rent Year**" shall mean the twelve (12) month period commencing on the date on which the first day of the month which follows the Commencement Date (the "**Rent Commencement Date**"), and each successive twelve (12) month period thereafter, and the second and each subsequent Rent Year shall commence on the anniversary of the Rent Commencement Date.

(b) The "**Rent**" for each Rent Year shall have both a fixed and variable component. The fixed component shall be \$7,200 dollars a year. The variable component shall be an amount calculated by multiplying (i) the quantity of railcars loaded or unloaded Tenant at the Facility during such Rent Year times (ii) the Per Car Rate, as hereinafter defined, applicable during such Rent Year, (iii) less the fixed amount.

(c) As additional consideration for the use of the Leased Premises the Tenant furthers agrees that for a period of 5 years, commencing on the date of this lease, the Tenant shall make available to the Landlord rent-free, for community purposes as it sees fit, the southern portion, including access to restrooms, of the Railroad Terminal Station located at 94-96 Central Ave. within the City. The Landlord shall be responsible for the ordinary and necessary maintenance and repairs in addition to a fair and reasonable portion of the utilities cost for the space so made available by the Tenant.

4.1 Tenant has been provided, and acknowledges receipt of, the reports listed on Exhibit C attached hereto (the "Engineering Reports"). Tenant accepts the Land subject to any and all conditions and limitations disclosed in the Engineering Reports. Tenant has provided to Landlord a conceptual plan which contains the structure, layout, improvement and finish of the Facility including but not limited to changes and additions planned by Tenant (the "Facility Plan") attached hereto as Exhibit C. Landlord has reviewed and accepted the Facility Plan. Tenant shall not make any material changes to the Facility Plan without the written consent of Landlord, in its sole and absolute discretion. Notwithstanding anything to the contrary set forth herein, in the event that any governmental agency or authority with jurisdiction requires revisions to the Facility Plan as a condition precedent in order to obtain the Operating Approvals, Tenant shall provide Landlord with written notice thereof, and Landlord shall not unreasonably withhold, condition or delay its consent to such revisions to the Plans. In the event that Landlord wishes to deny a request by Tenant for Landlord's consent to any such changes or revisions to the Plans, then, within seven (7) business days of Tenant's written notice thereof, Landlord shall provide Tenant with written notice advising Tenant of such denial and specifying in detail the reasons for such denial, and, in the event that Landlord fails to respond, within seven (7) business days of Tenant's written notice, to Tenant's request for Landlord's consent to any such changes or revisions to the Plans, then Landlord shall be conclusively presumed and deemed to have consented to such changes or revisions to the Plans. Tenant has inspected the Land and accepts the Land in an "as-is, where-is" condition, without representation or warranty of any kind, expressed or implied. Tenant, at its sole cost and expense, shall complete construction of the Facility in accordance with the Facility Plan, in a good and workmanlike manner, and in compliance with all applicable laws, codes and ordinances, in good faith and with due diligence, and complete construction of the Facility at the earliest practicable date. Tenant is responsible for obtaining any certificate of occupancy or other governmental permits, signoffs, consents or approvals required for the lawful use, occupancy and operation of the Facility.

4.2 Landlord shall not be required pursuant to this Lease to incur any expense in connection with the preparation of the Leased Premises for Tenant's use or occupancy.

5. USE

5.1 Tenant covenants and agrees to use and occupy the Leased Premises only and for no other purpose than for the operation of the Facility, and related incidental services.

5.2 Landlord grants permission to use the Leased Premises for those purposes set forth in Section 5.1 to the extent it is lawful to do so without any representation that the Leased Premises may be so used.

5.3 Tenant shall at all times comply with the Deed Restrictions.

6. REPAIRS AND MAINTENANCE

3.2 (a) During the first Rent Year the Per Car Rate shall be One Hundred Dollars (\$100.00) per railcar. Commencing with the second Rent Year and continuing during each subsequent Rent Year during the Term, the Per Car Rate shall be an amount equal to the Per Car Rate for the previous Rent Year plus a sum obtained by multiplying said previous year Per Car Rate by a fraction, the numerator of which fraction is the amount by which the Consumer Price Index for the first month of such subsequent Rent Year exceeds the Consumer Price Index for the first month of the previous Rent Year, and the denominator of which fraction is the Consumer Price Index for the first month of the previous Rent Year. In no event shall the Per Car Rate for any Rent Year be less than the Per Car Rate applicable during the previous Rent Year.

3.3 (a) For the purposes of this Lease, "Consumer Price Index" shall mean the Consumer Price Index of the Bureau of Labor Statistics, United States Department of Labor, U.S City Average, all items, base 1982-1984, equals 100. If the 1982-1984 base for the Consumer Price Index is changed or if the Consumer Price Index is discontinued or is revised so that computation of the Consumer Price Index adjustment cannot equitably be made in the manner hereinabove provided, then such conversion formula or other indices published by the United States Government or any agency or department thereof as shall be equitable, shall be used to make the adjustment contemplated by this Paragraph.

~~(b) On or before the thirtieth (30th) day following the end of each Rent Year, Tenant shall provide Landlord with a statement sworn to by the chief financial officer of Tenant detailing the exact quantity of solid waste tendered to the Facility and the number of railcars transporting solid waste from the Facility, and Tenant shall pay Rent for such Rent Year at the time of rendering such statement.~~

(b) Tenant shall maintain, in accordance with accepted accounting practices and industry standards, at the Leased Premises, during the Term hereof and for three (3) years thereafter, records and books of account (including, without limitation, bills of lading and manifests) recording all transactions in any way connected with or reflecting upon (i) the number of railcars transporting solid waste from the Facility, and (ii) the payment of Basic Rent. Tenant shall permit, during ordinary business hours, the examination and audit by the officers, employees and representatives of Landlord of such books and records of account. In the event said examination reveals that Tenant has underpaid Rent, Tenant shall immediately pay such shortfall to Landlord, with interest at an annual rate equal to Citibank Prime (as hereinafter defined), from the date said shortfall should have been paid until the date said shortfall is paid. Further, in the event said examination reveals a shortfall in excess of two (2%) percent of the amount actually paid by Tenant prior to the audit, Tenant shall immediately reimburse Landlord the cost of said audit, as Additional Rent.

3.4 All monetary amounts required to be paid by Tenant to Landlord under this Lease, other than Rent, shall constitute "Additional Rent" whether or not so designated herein. Landlord shall have with respect to such monetary payments, all rights and remedies as are otherwise provided to Landlord herein or at law or in equity with respect to the payment of Rent.

4. CONDITION OF PREMISES

6.1 Tenant shall, at its own cost and expense but subject to the prior approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed, maintain (including, but not limited to, the prompt removal of snow and ice), repair and replace the Facility and all other areas of the Leased Premises, provided that the necessity for any such maintenance, repair or replacement and/or any damage to the foregoing was not caused by the use, act, omission, misconduct or negligence of Landlord, its employees, invitees, contractors, licensees or agents (collectively "Landlord Parties"). In the event that the necessity for any such maintenance, repair or replacement and/or any damage to the foregoing is caused by the use, act, omission, misconduct or negligence of Landlord Parties, Landlord shall, at Landlord's election, either diligently and promptly perform such maintenance, repair or replacement, without unreasonably interrupting, interfering with or impairing Tenant's use and occupancy of the Lease Premises, or pay Tenant, on demand, for the reasonable cost of the applicable maintenance, repair, replacement or damage.

6.2 Except as provided in Sections 6.1 above, and except for environmental conditions which are not caused by the use, act, omission, misconduct or negligence of Tenant Parties, Tenant shall make or perform all maintenance, repairs and replacements applicable to the Leased Premises so that same are at all times kept in good condition and state or repair, and in compliance with all Laws, without expense to Landlord. Tenant covenants and agrees that it shall not cause or permit any waste (other than reasonable wear and tear), damage or disfigurement to the Leased Premises.

7. UTILITIES

7.1 During the Term, Tenant shall, at its own cost and expense, pay all charges for separately metered or charged electricity, gas, water, heat, power or other communication services and all other utilities used by Tenant or consumed in the Facility or Leased Premises (collectively "Utilities") directly to the applicable utility companies. All such payments shall be made when due and Tenant shall not permit utility services to be suspended on account of non-payment. In the event any of the Utilities are not separately metered to the Leased Premises, Landlord shall apportion the cost of such Utilities between the Leased Premises and the remainder of the Land, in its sole but reasonable discretion, and Landlord shall promptly deliver to Tenant its invoice for Tenant's Utilities during each calendar month. Tenant shall pay, as Additional Rent, its allocated share of the cost of such Utilities within ten (10) days of receipt of an invoice therefore from Landlord.

7.2 Landlord shall not in any way be responsible or liable to Tenant at any time for any loss, damage or expense resulting from any change in the quantity or character of the Utilities or for their being no longer suitable for Tenant's requirements or from any cessation or interruption of the supply of Utilities, nor shall any such loss, damage or expense, or non-supply of Utilities, in any way affect the tenancy or in any way relieve Tenant of any obligation under the terms of this Lease, unless arising from Landlord's gross negligence or intentional misconduct.

8. TAXES

of all policies and renewals thereof to be maintained by Tenant hereunder not less than ten (10) business days prior to the Commencement Date and not less than ten (10) business days prior to the expiration date of each policy. The limits of such insurance shall not limit the liability of Tenant.

10. SIGNS

Tenant shall have the right to install, and Landlord hereby approves all signs which are set forth on the Plans. In addition, Tenant shall be entitled to place one (1) additional sign on the Leased Premises identifying the name or trade identity of Tenant, which sign shall be in compliance with all municipal and other governmental requirements and be subject to Landlord's reasonable approval as to location, size and aesthetics, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall maintain all such signs in good order and condition during the Term, shall pay for all utilities used in connection with such signs and shall remove such signs and repair any damage to the Leased Premises on which such signs are located arising from the sign installation and/or removal, at the expiration or termination of the Term.

11. IMPROVEMENTS AND FIXTURES

11.1 The Facility, other than rail structures, shall belong to Landlord upon the expiration of the Term. However, if Landlord notifies Tenant prior to the end of the Term that Landlord wishes Tenant to remove all or part of Tenant's improvements, Tenant shall promptly remove such improvements prior to the end of the Term. If Tenant fails to remove any property, equipment, fixtures or other property as requested by Landlord, or as otherwise required herein, by the end of the Term, or within thirty (30) days after any earlier termination, dispossession or removal, then, in addition to same being an event of default hereunder, in that event, the said property, equipment and fixtures shall be deemed at the option of Landlord to be abandoned and may be disposed of for the account of Tenant in any manner determined by Landlord, with Tenant being responsible for the cost of any such removal or disposal.

12. ASSIGNMENT AND SUBLETTING

12.1 Except as may otherwise be expressly provided herein, Tenant may not assign this Lease, sublet all or any portion of the Leased Premises, allow the same to be used or occupied by anyone other than Tenant, its contractors, present subsidiaries or affiliates, or otherwise transfer, mortgage or hypothecate this Lease, by operation of law or otherwise, without, in each instance, obtaining Landlord's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed.

12.2 Any assignment or transfer of this Lease permitted hereunder shall not affect any obligations of either party hereunder arising prior to such assignment or transfer. Any

assignment or transfer of this Lease shall not be effective until delivery of a written assumption of all of the assignor's obligations under this Lease signed by the assignee/transferee in form reasonably acceptable to Landlord. For the purposes of this Lease, a sale or change in control of Tenant shall not be considered an assignment of this Lease.

12.3 Any assignment or subletting which violates the terms of this Section 12 shall constitute an Event of Default pursuant to Section 15.3(h).

13. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

13.1 Tenant covenants and agrees that from the Effective Date until the conclusion of the Term, it shall promptly (and, in any event, prior to the time specified in any notice of violation) at Tenant's cost and expense, comply with all Laws applicable to the Facility, the Leased Premises, and the operation of Tenant's business therein and thereon other than with respect to environmental conditions which exist on the Leased Premises or the Land as of the Effective Date of this Lease. If applicable Laws require that an alteration or improvement be made to the Leased Premises, Tenant forthwith shall cause the alteration or improvement to be made at its sole cost and expense, subject to the terms of Section 20.3 hereof.

13.2 Tenant shall permit Landlord and Landlord's agents, servants and employees, including, but not limited to, legal counsel and environmental consultants and engineers, access to the Leased Premises for the purposes of environmental inspection and sampling during regular business hours, or during other hours either by agreement of the parties or in the event of any environmental emergency, provided that each such access, where practicable, shall be conducted in the presence of a representative of Tenant.

14. ACCESS AND INSPECTION BY LANDLORD

14.1 Tenant agrees that Landlord, its agents, and other representatives, shall have the right, during normal business hours (except in the event of an emergency in which case access shall be unrestricted), to enter into and upon the Leased Premises, or any part thereof, for the purpose of examining the same, or to gain access to and utilize and make alterations, repairs, additions and improvements to the Facility or Leased Premises or for purposes of exhibiting the same to prospective tenants within the last six (6) months of the Term of this Lease, lenders and purchasers or, making such repairs, alterations, additions and improvements therein as may not have been done by Tenant as required hereunder, or which Landlord elects, in its sole and absolute discretion, without obligation, to perform, provided that each such entry shall be conducted in the presence of a representative of Tenant, where practicable. Nothing contained in this paragraph shall impose upon Landlord a requirement for repairs or improvements not otherwise required by the terms of this Lease.

14.2 For purposes of implementing and facilitating Landlord's rights under Section 14.1 (or other provisions of this Lease of similar import or nature) Tenant agrees to provide Landlord's designated representative with keys and alarm codes which shall be utilized only in case of an emergency.

15. DEFAULT

15.1 Any installment(s) of Rent, Additional Rent or other sum required to be paid by Tenant to Landlord which is not paid within ten (10) days following the date on which Tenant receives written notice from Landlord that such sum is due, shall bear interest from the due date until the same shall be paid at the lesser of (a) a fixed rate equal to four (4) percentage points above the published prime rate of Citibank, N.A., New York, New York, for one (1) year commercial loans ("Citibank Prime") in effect on the date such amount was due and payable, or (b) the maximum rate of interest permitted by applicable law; and upon the second such occurrence during any twelve (12) month period, Tenant shall be required to pay a late charge equal to five (5%) percent of the amount due to compensate Landlord for its administrative costs with respect thereto. Such late charge is agreed and deemed by Tenant to constitute Landlord's approximate actual damages caused by Tenant's untimely payment of rent. In the event that Citibank N.A. ceases to publish its prime rate, then Landlord may substitute the prime rate of another of the five (5) largest commercial banks headquartered in New York, New York, which rate shall then, for purposes of this Lease, continue as "Citibank Prime". Tenant hereby indemnifies Landlord against any and all costs and charges including reasonable counsel fees incurred in enforcing the payment thereof, in obtaining possession of the Facility or the Leased Premises after default of Tenant, upon the expiration of this Lease or the earlier termination of this Lease or in enforcing any covenant or agreement made by Tenant hereunder.

15.2. All covenants to be performed by Tenant hereunder shall be performed by Tenant at Tenant's sole cost and expense, without any abatement of rent, except as may herein be otherwise expressly provided herein. If Tenant shall fail to perform any act or obligation imposed upon it under the terms of this Lease, and in the further event that such failure shall continue for a period of thirty (30) days after the giving of notice thereof by Landlord, unless this Lease shall specify a shorter period of time for performance and except in the case of an emergency, in which event such thirty (30) day period shall be inapplicable, Landlord may (but shall not be obligated to) perform such act or obligation without waiving or releasing any of Tenant's obligations relative thereto. Any sum of money paid or costs incurred by Landlord, including any reasonable counsel fees in performing any act or obligation of Tenant, together with interest at the rate specified in Section 15.1 from the date payment was made or cost incurred by Landlord, shall be payable by Tenant to Landlord on demand, as Additional Rent.

15.3 Any one or more of the following events shall, unless otherwise permitted in this Lease, constitute an Event of Default: (a) the sale of Tenant's interest in the Leased Premises under attachment, execution or similar legal process other than to a lender to Tenant as approved by Landlord pursuant to the terms of this Lease, with the understanding that any such Lender must comply in all respects with the terms of Section 12 hereof, or if Tenant is adjudicated bankrupt or insolvent and such adjudication is not vacated within sixty (60) days; (b) the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any guarantor of Tenant's obligations hereunder as a bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any guarantor with creditors whether pursuant to the Federal Bankruptcy Act or any similar federal or state proceedings,

unless such petition is filed by a party other than Tenant or any such guarantor and is withdrawn or dismissed within one hundred and twenty (120) days after the date of filing; (c) the admission in writing by Tenant or any such guarantor of its inability to pay its debts when due; (d) the appointment of a receiver or trustee for the business or property of Tenant or any such guarantor, unless such appointment shall be vacated within sixty (60) days of its entry; (e) the making by Tenant or any such guarantor of an assignment for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease shall pass to another by operation of law; (f) the failure of Tenant to pay any Rent, Additional Rent, or any other charge or other sum of money within ten (10) days after receipt of notice that the same is due hereunder; (g) default by Tenant in the performance or observance of any covenant or agreement of this Lease (other than a default involving the payment of money), which default is not cured within thirty (30) days after the giving of notice thereof by Landlord, unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no Event of Default shall occur so long as Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same to conclusion at the earliest practicable date, but in no event later than ninety (90) days from the date of such notice; and (h) the occurrence of any other event described as constituting a default or an Event of Default elsewhere in this Lease.

15.4 Upon the occurrence of an Event of Default, Landlord may exercise any legal or equitable right or remedy which it may have. Any costs and expenses incurred by Landlord (including, without limitation, reasonable attorneys' fees) in enforcing any of its rights or remedies under this Lease shall be deemed to be Additional Rent and shall be repaid to Landlord by Tenant upon demand.

15.5 Nothing contained herein shall be deemed in any way to limit Landlord's rights and remedies under the Bankruptcy Code, 11 USC Section 101, *et seq.* as existing or as hereafter amended.

16. TRANSFERS BY LANDLORD

16.1 Landlord may at any time during the Term of this Lease sell, convey, assign, mortgage or otherwise deal with the Land subject to the rights of Tenant under this Lease.

16.2 Any sale or conveyance of the Leased Premises or the Land shall release Landlord from any liability for any claim, liability or loss with respect to events which occur after the effective date of such sale as to all of the terms, covenants and conditions of this Lease, and, thereafter, Tenant shall look solely to Landlord's successor in title. No sale or conveyance by Landlord shall affect this Lease and Tenant shall attorn to Landlord's successor in title.

17. NOTICES

Any notice or demand required or permitted to be given by either party to the other shall be in writing and shall be deemed to have been properly given only if mailed first class, postage prepaid by registered or certified mail, return receipt requested, or delivered by

national overnight air courier service providing written evidence of delivery, addressed, if to Tenant at the address of Tenant above stated or to such other address as Tenant may have previously given to Landlord in writing, and if to Landlord, at the address of Landlord above stated or to such other address as Landlord may have given by notice in writing to Tenant. Any notice shall be deemed to have been given at the time of personal delivery or, if mailed, not more than five (5) days after the date of mailing. Any notice or demand given on Landlord's or Tenant's behalf by their respective management, managing agent or counsel, those persons being authorized to act on behalf of the parties in any manner provided herein, shall be deemed to have been given by the party on whose behalf such person acts, and shall be effective and binding upon the recipient.

18. NON-WAIVER BY LANDLORD

The failure of Landlord to insist upon strict performance of any of the covenants or conditions of this Lease, or to exercise any option of Landlord herein conferred in any one or more instances, shall not be construed as a waiver by Landlord of any of its rights or remedies in this Lease, and shall not be construed as a waiver, relinquishment or failure of any such covenants, conditions, or options, which shall be and remain in full force and effect.

19. AIR, GROUND AND WATER POLLUTION

19.1 Tenant shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any Hazardous Material into the atmosphere, ground, sewer system, or any body of water. If Tenant breaches this covenant, Tenant shall be liable to Landlord for all damages resulting therefrom, and Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, penalties, fines, costs, liabilities or losses, including, without limitation, natural resource damages; the diminution in value of the Leased Premises, the Land, or any other property affected by said Hazardous Materials; damages for the loss or restriction on use of rentable or usable space or of the Leased Premises, the Land, damages arising from any adverse impact on marketing of the Leased Premises or the Land, or any other property affected by said Hazardous Materials, any personal injury (including wrongful death) or property damage (real or personal), and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees which arise during or after the Term as a result of such breach or as a result of any contamination caused or permitted by Tenant. This indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or by the holder of any mortgage encumbering the Leased Premises, the Land or any other property affected by said Hazardous Materials. If Tenant breaches this covenant, Tenant shall promptly take all actions at its sole expense as are necessary to return the Leased Premises and/or the Land to the condition existing prior to the introduction by Tenant Parties of any Hazardous Material to the Leased Premises or the Land; provided that Landlord's approval of such action shall first be obtained. The provisions of this Section shall be in addition to any other obligations and liabilities Tenant may have at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

19.2 As used herein, the term “**Hazardous Material**” shall mean the following: (1) “Hazardous Substances”, as defined by the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 43 U.S.C. Sec. 9601 *et seq.*; (2) “Hazardous Wastes”, as defined by the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Sec. 6901 *et seq.*; (3) any other wastes, pollutants, contaminants or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other applicable federal, state or local law, regulations, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials, all as amended or hereafter amended; (4) more than 7 gallons of crude oil or distillate thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (5) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. Sec. 2011 *et seq.*, as amended or hereafter amended; and (6) the asbestiform varieties of chrysolite, crocidolite, amosite, anthophyllite, tremolite or actinolite, or asbestos in any other form, in any condition.

19.3 In the event Tenant’s use and occupancy of the Leased Premises as contemplated herein are prevented or materially and adversely impaired or restricted as a result of either or both of (i) the existence of Hazardous Materials on the Leased Premises or the Land as a result of the actions or omissions of Landlord Parties or (ii) Hazardous Materials which exist on the Leased Premises or the Land as of the Effective Date of this Lease, Tenant shall provide Landlord with written notice of the existence of such Hazardous Materials and describe in detail the affect said substances are having on Tenant’s operations at the Leased Premises. Landlord shall notify Tenant, within one hundred twenty (120) days of receipt of said notice, whether or not Landlord elects to remediate said Hazardous Materials. In the event Landlord elects to remediate said Hazardous Materials, Landlord shall remediate said Hazardous Materials, at solely Landlord’s cost and expense, in compliance with all applicable Laws, in good faith and with due diligence, and, to the extent practicable, Landlord shall not unreasonably interrupt, interfere with or impair Tenant’s use and occupancy of the Leased Premises. In the event Landlord elects not to remediate said Hazardous Materials, Tenant shall have the right, within thirty (30) days of its receipt of notice of Landlord’s election, either to terminate this Lease or to remediate said Hazardous Materials at Tenant’s cost and expense. In the event Tenant elects to terminate this Lease pursuant to the terms of this Section 19.3(b), this Lease shall terminate thirty (30) days following Landlord’s receipt of Tenant’s notice, as if said date were the expiration date of the Term of this Lease. In the event Tenant does not exercise its right to terminate this Lease within thirty (30) days following its receipt of Landlord’s election, Tenant shall have waived its right to terminate this Lease based upon the conditions set forth in Tenant’s said notice upon Landlord. In the event Tenant elects to remediate said Hazardous Materials pursuant to this Section 19.3(b), (i) subject to Landlord’s oversight and approval, Tenant shall, at its cost and expense, remediate said Hazardous Materials in compliance with all applicable Laws, in good faith and with due diligence, and (ii) Tenant shall have the right to set off the reasonable, documented amount of Tenant’s actual costs of the remediation of said Hazardous Materials against, (I) the amount of the Rent which is due and payable by Tenant for the Rent Year during which such actual costs of the remediation of said Hazardous Materials were incurred by Tenant, and (II) in the event that the amount of Tenant’s actual costs of the remediation of said Hazardous

Materials exceeds the amount of the Rent which is due and payable by Tenant for the Rent Year during which such actual costs of the remediation of said Hazardous Materials were incurred by Tenant, the amount of the Rent which is thereafter due and payable by Tenant. Tenant shall not have the right to subject the Leased Premises, the Land, or any other property of Landlord to any engineering or institutional controls absent Landlord's written consent.

(c) In the event the existence of Hazardous Materials on the Leased Premises does not predate the Effective Date of this Lease and is not caused by or is not the result of any act or omission of Landlord Parties, then, at Tenant's sole cost and expense, Tenant shall undertake all remediation required in order to return the Leased Premises to the condition existing as of the Effective Date of this Lease. Promptly upon completion of all such remediation, Tenant shall, at Tenant's own expense, restore the affected areas of the Leased Premises from any damage or condition caused by the remediation, including, without limitation, closing, pursuant to Law, any wells or piezometers installed by or on behalf of Tenant at the Leased Premises. Tenant shall indemnify Landlord from and against any and all losses, damages, liabilities, costs and expenses, including, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or by the holder of any mortgage encumbering the Leased Premises or the Land other than which are caused by or are the result of any act or omission of Landlord Parties and other than Hazardous Materials which exist on the Leased Premises or the Land as of the Effective Date of this Lease. The provisions of this Section 20 shall be in addition to any other obligations and liabilities Tenant may have at law or equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

20. FORCE MAJEURE

20.1 This Section shall apply in the event that if at any time during the Term there shall occur one or more strikes, lockouts or labor disputes; or there shall be an inability on the part of either party to obtain labor or materials; or there shall occur any act of God, or action by governmental authority or whether there be war, insurrection, civil disobedience, fire or other casualty, or any event not specifically mentioned which impairs the ability of either party to perform according to the terms of this Lease (collectively referred to as "Force Majeure"). In the event any of the foregoing shall occur which results in the inability of either Landlord or Tenant to timely perform any obligation which it is required to perform under this Lease, then such non-performance shall be excused and shall not be a breach of this Lease by the party failing to so perform, but only to the extent occasioned by such event. Any non-performance by either party hereto which occurs for any reason above stated shall extend performance under this Lease for that period of time which the party who was obligated to perform was disabled from so performing and this Lease shall be extended, accordingly, for such period of time. Notwithstanding the foregoing, the terms of this Section 21.1 shall not apply to, or operate to postpone, defer or extend or otherwise affect Tenant's obligation to make payments of Basic Rent, Additional Rent, or any the payment of any other monies, fees or charges required by the terms of this Lease.

21. CONDEMNATION

21.1 If the whole of the Leased Premises shall be taken by any competent authority under the power of eminent domain or in the event of conveyance of the whole of the Leased Premises in lieu thereof, this Lease and all obligations to pay Basic Rent and Additional Rent shall terminate as of the day possession shall be taken by such authority. If less than the whole of the Leased Premises shall be so taken or conveyed, this Lease shall terminate only in respect of the part so taken or conveyed as of the day possession shall be taken by such authority and Rent and Additional Rent shall be equitably reduced based upon good faith negotiations of the parties, which such negotiations shall take into consideration the portion of the Facility which is taken or conveyed, and any limitations on the use of the Leased Premises as a result of such taking or conveyance. If this Lease shall continue in effect as to any portion of the Leased Premises not so taken or conveyed, there shall be no reduction in rent. If this Lease shall continue in effect, Tenant shall, at its expense, but shall be obligated only to the extent of the proceeds of the award or other compensation (after deducting all expenses in connection with obtaining same) received by Tenant for the improvements taken or conveyed (excluding any award or other compensation for land or for the unexpired portion of the term of any superior lease), promptly make all necessary alterations so as to constitute the remaining portion of the Leased Premises useable by Tenant.

21.2 Notwithstanding anything herein contained to the contrary, in the event there is a taking of all or any portion of the Leased Premises or any portion of the Land associated with the Leased Premises, such that, in Tenant's reasonable business judgment, Tenant shall not be able to operate its business at the Leased Premises, Tenant shall have the right to terminate this Lease by providing written notice to Landlord or said termination within thirty (30) days of said taking, which termination shall be effective thirty (30) days following Landlord's receipt of Tenant's notice. In the event Tenant does not timely terminate this Lease as provided herein, Tenant shall have waived its right to terminate this Lease as a result of said taking.

21.3 (a) In the event of a permanent taking of all or any part of the Leased Premises, Landlord and Tenant shall have the right to appear in the condemnation or eminent domain proceedings and to participate in any and all hearings, trials and appeals therein, for the purpose of protecting their interests hereunder. In any such proceeding to determine the value of the Leased Premises so taken, Landlord and Tenant shall together make one claim for their combined interest in the land and the building, fixtures, equipment, furnishings and other property comprising the Leased Premises (to the extent compensable), and the net award received shall be paid as hereafter provided in this Section. Tenant understands and agrees that Landlord shall have the right to finally determine the strategy, outcome (by way of settlement or otherwise) and conduct of such proceedings, in its sole but reasonable discretion.

(b) Nothing contained herein shall be deemed to affect in any way any claim or entitlement Landlord may have for the value of any portion of the Land not included within the Leased Premises hereunder which may be affected by any taking described in this Section or shall serve to give the Tenant any interest in any such claim.

22. CASUALTY

22.1 If the Facility shall be damaged or destroyed by fire or other casualty, this Lease shall continue in effect without an abatement of Rent or Additional Rent, and Tenant shall, at its expense, in good faith and with due diligence, repair and restore the Facility to its condition prior to said damage. Provided Tenant is not in default of any of the terms of this Lease, Landlord shall make all proceeds of the insurance upon the Facility available to Tenant be used for such repair and restoration.

22.2 Notwithstanding the foregoing, in the event the Facility shall be damaged or destroyed by fire or other casualty within the last two (2) years of the Term, and the costs to repair said damage exceed Twenty Five Thousand (\$25,000) Dollars, in lieu of repairing said damage as required by section 22.1 above, Tenant shall have the right to terminate this Lease by providing written notice to Landlord of said termination within thirty (30) days of the date of said damage. In the event Tenant elects to terminate this Lease in accordance with the terms of this Section 22.2, this Lease shall terminate on the date that is thirty (30) days from the date of Tenant's election to terminate as if said date was the natural expiration of the Term, and the proceeds of the insurance upon the Facility shall be the paid to Landlord.

23. REPRESENTATIONS

Landlord and Tenant each represent to the other that (i) each party has the full legal power and authority to execute, deliver and perform its obligations under this Lease, and (ii) this Lease constitutes the valid and binding agreement of such party, enforceable in accordance with its terms.

24. QUIET ENJOYMENT

Landlord covenants that so long as Tenant substantially performs all of Tenant's obligations hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Leased Premises for the Term, subject, nevertheless to the terms of this Lease.

25. SURRENDER OF PREMISES

On the Expiration Date, or upon any earlier termination of this Lease or upon re-entry by Landlord, Tenant shall quit and surrender the Leased Premises to Landlord broom-clean and in good order, condition and repair (reasonable wear and tear, and damage by fire or other casualty as Landlord is required to repair or restore under this Lease excepted) and shall deliver and surrender the Leased Premises to Landlord peaceably, together with all alterations, additions and improvements in, to or on the Leased Premises made by Landlord or Tenant as permitted under the Lease. Notwithstanding the foregoing, Landlord reserves the right, to require Tenant, at its cost and expense, to remove any alterations or improvements installed by or for Tenant (excluding the Facility) pursuant to the terms of Section 11 hereof, which

covenant by Tenant shall survive the surrender and the delivery of the Leased Premises as provided hereunder. Prior to the expiration of the Lease Term, Tenant shall, unless otherwise provided in this Lease, remove all of its property, fixtures, equipment and trade fixtures from the Leased Premises. All property not removed by Tenant shall be deemed abandoned by Tenant, and Landlord reserves the right to charge the reasonable cost of such removal to Tenant, which obligation shall survive the Lease termination and surrender hereinabove provided. If the Leased Premises are not surrendered at the end of the Term, Tenant shall indemnify, defend and hold harmless Landlord against loss or damage resulting from delay by Tenant in surrendering the Leased Premises, including, without limitation, any claims made by any succeeding tenant founded on the delay.

26. INDEMNITY

26.1 Anything in this Lease to the contrary notwithstanding, and without limiting Tenant's obligations pursuant to Sections 9 and 19 hereof, Tenant covenants and agrees that it will indemnify, defend and save harmless Landlord against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees, which may be imposed upon or incurred by Landlord by reason of any of the following occurring during the Term: (i) any matter, cause or thing arising out of use, occupancy, control or management by Tenant of the Leased Premises, or any part thereof; (ii) any acts and/or negligence on the part of Tenant or any of its agents, contractors or employees; (iii) any accident, injury, damage to any person or property occurring in or about the Leased Premises, the Land, or any part thereof, to the extent caused by Tenant or any person employed, controlled or engaged by Tenant; (iv) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with.

26.2 Landlord shall be responsible for and shall defend, indemnify and save harmless Tenant, and each of its officers, members, managers, employees, agents, contractors and invitees from and against any and all claims and suits for, and any and all liability, loss or expense (including reasonable attorneys fees) arising from or incidental to or in connection with (i) any acts or omissions of any of the Landlord Parties; and (ii) any failure on the part of Landlord to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with.

26.3 A party which seeks indemnification pursuant to this Lease shall promptly notify the other party of any such claim asserted against it and shall promptly send to the other party copies of all papers or legal process served upon it in connection with any action or proceeding brought against such party seeking such indemnification by reason of any such claim.

26.4 Notwithstanding anything herein to the contrary, Tenant agrees that Tenant shall not have the right to sue for or collect, and Landlord shall never have any liability or responsibility whatsoever for, any consequential or indirect damages including without limitation lost profits and lost income, whether proximately or remotely related to any default of Landlord under this Lease or any act, omission or negligence of Landlord, its agents,

contractors or employees, and Tenant hereby waives any and all such rights.

27. LEASE CONSTRUCTION

This Lease shall be governed by and construed in accordance with the laws of the State of New York. The captions of Sections are included for reference purposes only and shall have no effect on the construction or interpretation of this Lease. All obligations related to the payment of rent or other charges shall be deemed to be separate, independent covenants. This Lease, although prepared by Tenant, has been fully negotiated by the parties. Accordingly, no rule of construction or interpretation which might otherwise be applied against Tenant as the draftsman of this Lease shall be applicable in any controversy or dispute relating to this Lease, its meaning or the rights or obligations of the parties hereunder.

28. BINDING EFFECT

The terms, covenants and conditions of the within Lease shall be binding upon and inure to the benefit of each of the parties hereto, their respective executors, administrators, heirs, successors and permitted assigns, as the case may be.

29. DEFINITIONS

The neuter gender, when used herein and in the acknowledgement hereafter set forth, shall include all persons and corporations, and words used in the singular shall include words in the plural where the text of this Lease so requires.

30. LANDLORD'S REMEDIES

30.1 The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any of the others or any other remedies available to Landlord at law or in equity.

30.2 In addition to any other legal remedies for violation or breach by or on the part of Tenant or by any undertenant or by anyone holding or claiming under Tenant or any one of them, of the restrictions, agreements or covenants of this Lease on the part of Tenant to be performed or fulfilled, such violation or breach shall be restrainable by injunction at the suit of Landlord.

31. COVENANT AGAINST LIENS

Tenant shall take all actions and do all things necessary to prevent the filing of (i) any construction, mechanic's, or materialman's lien against the Leases Premises or the Land by reason of any work, labor, services or materials performed or supplied or claimed to have been performed for or supplied to Tenant, or anyone holding the Leased Premises, or any part thereof, through or under Tenant, or (ii) any other lien arising by reason of any acts or

absolute discretion.

35. SURVIVAL

All indemnifications set forth in this Lease shall survive the expiration or termination of the Term of this Lease.

36. ENTIRE AGREEMENT

This Lease and the exhibits hereto annexed, constitute the entire agreement between the parties and supersedes any previous negotiations. There have been no representations or warranties made by Landlord or understandings between the parties other than those set forth in this Lease, the Transportation Agreement and the JCO, and their exhibits. This Lease may not be modified, amended, or supplemented except by a written instrument duly executed by Landlord and Tenant.

37. WAIVER OF TRIAL BY JURY

Both Landlord and Tenant hereby waive trial by jury in any action, proceeding or claim which may be maintained by one against the other relative to any matter under this Lease. Such waiver shall survive the expiration or termination of this Lease. Tenant agrees that in the event that summary proceedings are commenced by Landlord for nonpayment of rent or possession of the Leased Premises, Tenant will not and waives all right to interpose any counterclaim of whatsoever nature in such proceeding, unless such counterclaim is compulsory in accordance with applicable law.

38. ATTORNEY FEES

In the event that either Landlord or Tenant shall engage the services of an attorney to commence a suit for breach of this Lease or to enforce any of the provisions hereof, the prevailing party (the prevailing party being deemed to be the party who is determined in the litigation to have rightfully sought to enforce its rights under this Lease) shall be entitled to recover from the other party such reasonable attorney's fees, costs and expenses as the prevailing party incurred in the prosecution of its rights. In any circumstances wherein Landlord shall take action to recover rent or to enforce its rights hereunder which is amicably resolved in Landlord's favor, Landlord shall be deemed to be the prevailing party.

39. AUTHORITY

The parties to this Lease represent and warrant that this Lease and the execution hereof by their respective signatories has been duly authorized and approved the parties. The undersigned officer(s) and/or representative(s) of the parties executing this Lease represent and warrant that they are duly authorized to execute this Lease on behalf of the parties and that the execution and performance of this Lease by the parties does not violate the terms of any other agreement to which either is a party or by which either is bound.

DRAFT

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals or caused these presents to be signed by its proper corporate officers and caused its proper corporate seal to be hereunto affixed, the day and year first above written.

CITY OF CORTLAND

By: _____

Name:

Title: Mayor, City of Cortland, NY

**THE NEW YORK, SUSQUEHANNA AND
WESTERN RAILWAY CORPORATION**

By: _____

Name: Nathan R. Fenno

Title: President

EXHIBIT A
FACILITY CONCEPT PLAN