

City of Rochester, New York
City Hall, Room 109-A
30 Church Street
Rochester, New York, 14614
(585) 428-7151

August 15, 2013

REQUEST FOR PROPOSALS

BULK SALE OF CITY TAX LIENS

The Director of Finance of the City of Rochester, New York, is seeking proposals from qualified firms for the bulk sale of tax liens.

Sealed proposals shall be submitted to:

Brian L. Roulin, CPA,
Director of Finance
City of Rochester, New York
30 Church Street, Room 109-A
Rochester, NY 14614

no later than 5:00 PM, September 19, 2013.

In order to be considered and evaluated for an award, the proposals must contain all forms and statements requested by the RFP.

The right is reserved to reject any and all bids as may be in the best interest of the City of Rochester, and to waive any and all informalities.

REQUEST FOR PROPOSALS
BULK SALE OF CITY TAX LIENS

1. Scope of Contract

The Rochester Finance Director is seeking proposals from responsible buyers to enter into a contract for the bulk sale of delinquent tax liens of the City of Rochester. The City of Rochester has completed five (5) bulk lien sales to American Tax Funding, LLC (ATF).

The City of Rochester will provide your firm an electronic file of tax liens (including all liens, fees, penalties and interest) by requesting via e-mail from Charles A. Benincasa, City Treasurer, at benincc@cityofrochester.gov. Electronic copies of the contracts with ATF are also available upon request.

The Request for Proposal document is available on the City of Rochester's website at www.cityofrochester.gov.

Pursuant to the previous contracts with ATF, ATF has a right of first refusal for five (5) years for:

- a. Tax liens on properties where previously purchased liens have not yet been reduced to zero, on a property-specific basis and in the aggregate; and
- b. Tax liens on properties where ATF has never purchased liens before. This right of first refusal allows ATF to match any other bid in the aggregate.

ATF does not have a right of first refusal for tax liens on properties where liens previously sold to ATF have been satisfied.

Accordingly, the City of Rochester is seeking proposals to purchase delinquent tax liens for three (3) lien pools:

- (A) Tax liens where a previously purchased ATF lien is still open on a property ("Unsettled Liens");
- (B) Tax liens on properties where previously purchased ATF liens have been satisfied ("Settled Liens"); and
- (C) Tax liens on properties where ATF has never purchased liens before ("New Liens").

The pools may be awarded to one, two or separately to three bidders.

The successful bidder for any of the lien pools will be required to enter into a contract in the form attached as Attachment 1.

The contract requires that the successful bidder purchase the tax liens at a lump sum price, and details the responsibilities and standards required of the successful bidder.

Properties have been removed from the lien pools where the property is government-owned; has known environmental contamination; or is in the process of a tax certiorari

proceeding with the City of Rochester. Owner-occupied properties will be included in the lien sale and are identified on the basis of having a New York State STAR exemption.

The City of Rochester also plans on further removals based on community input for the purpose of demolition and redevelopment which will be concurrently underway during the period of this RFP.

2. Term

The successful bidder(s) will be offered the opportunity to bid first on the next four (4) delinquent tax liens sales of the City, subject to the rights of first refusal of ATF.

3. Collection Processes

Sections 9-60 through 9-154 of the Rochester City Charter are the local laws governing tax collection and foreclosure as currently performed. Liens are in rem. Interest to the property owner cannot exceed that provided by Section 6-111 of the Rochester City Charter. Section 6-123 provides the legal basis for the City of Rochester to conduct bulk lien sales.

The applicable interest rate for taxes levied on July 1, 2011 and prior years is 18%. The applicable interest rate on taxes levied on July 1, 2012 is 12%.

The firm shall use best efforts to allow property owners to remain in possession of their properties. Such efforts shall include proper notifications and use of payment plans for redemption by the property owner in the legal period allowed before foreclosure.

Notices shall include an initial notification by the firm to the property owner of the firm's acquisition of the tax lien. The notice shall include the firm's address and toll free telephone number, the tax bill date, the unpaid lien, interest and fees, and the availability of payment arrangements between the firm and the property owner. The firm shall have regular business hours in which to be contacted by property owners. The firm shall also provide a website for account information with the ability to make payments online.

Subsequent notices shall be mailed to property owners stating the running balance of accruing interest and penalties.

The firm may, at the firm's discretion, accept partial payments and enter into installment payment agreements under terms and conditions that comply with all laws and regulations.

Any installment payment agreement shall be between the firm and the property owner. One (1) copy of such installment payment agreement shall be provided to the property owner and one (1) copy filed with the City Treasurer.

4. Satisfaction of Lien

The property owner and the City shall be notified in writing when the tax lien and all charges have been satisfied.

5. Accounting

The firm shall keep an accounting of payments by property owners, which may be subject to audit by the Director of Finance.

The firm shall send monthly reports to the Director of Finance of the payment status of the acquired liens and property management and maintenance records for properties acquired by the firm through foreclosure. The firm will use local property management for any acquired properties.

6. Form of Contract

The firm must be willing and able to sign the attached City contract (Attachment 1).

7. Sub-Contracts

The firm shall be considered the prime contractor to the City. The firm shall not sub-contract nor assign in whole, or any in portion thereof, the contract, or any tax lien, to a third party without the written permission of the Director of Finance.

8. Questions

Written questions may be submitted to the following link www.cityofrochester.gov/taxlienrfp on the City of Rochester's website by September 5, 2013. Answers to written questions will be posted on the City of Rochester's website by September 11, 2013.

9. Electronic copies of the lien pools – “Unsettled,” “Settled” and “New” - are available by contacting Charles A. Benincasa, City Treasurer at benincc@cityofrochester.gov.

Electronic copies of the five (5) contracts with ATF are also available upon request.

10. The Proposal

The firm shall submit a response to this RFP in the following format:

- A. Statement of the dollar amount offered for the purchase of the tax liens and that amount expressed as a percentage (%) of the total value of the tax liens. The lump sum amount and the percentage of payment proposed shall be stated in writing and in words on the letterhead of the firm. The proposal shall be signed by an officer of the firm. In addition, the firm must indicate pricing on a property-specific basis as provided for on the attached bid lists for the new lien pool and subsequent lien pool in Excel format on a USB Flash Drive.
- B. A statement of the qualifications of the firm, which shall include the longevity of the firm and of officers with the firm. Include three years audited financial statements.
- C. A statement of the qualifications of the employees of the firm who will be responsible for the City of Rochester account, including the longevity of the employee.
- D. A list of all public sector entities with which the firm has had similar contracts, the name of a contact person with the entity, and phone number. If possible, please provide at least one reference from a taxing authority in New York State.
- E. Specimen copies of the standard notifications to property owners and of the installment payment arrangement.
- F. Standard Installment Payment Agreement of the Firm.

Ten copies of the proposal shall be submitted in a sealed envelope to Brian L. Roulin, Director of Finance, 30 Church Street, Room 109-A City Hall, Rochester, New York, 14614, no later than 5:00 P.M., September 19, 2013. Faxed or e-mailed proposals shall not be accepted.

11. Selection of the Firm

The selection of the firm(s) to enter into a contract with the City shall take into consideration the highest amount of payment to be offered, the quality of the proposal, and the qualifications of the firm in regards to its previous experience and history with contracts similar to what the City has requested. The selection shall also take into consideration the compliance of the proposer with all elements requested in the RFP.

Three (3) rating sheets will be tabulated – one for the “Unsettled Liens,” one for the “Settled Liens” and one for the “New Liens”. Following are the factors and their respective weights. Proposals will be weighted on a scale of 0 (zero) to 10 (ten).

- | | |
|--------------------------------------|-----|
| 1) Pricing: | 50% |
| 2) Quality of Proposal: | 15% |
| 3) Firm Qualifications: | 15% |
| 4) City Location: | 10% |
| 5) Minority or Women Owned Business: | 10% |

The City of Rochester reserves the right to reject any Proposals which do not comply with the intent of the RFP, and to reject any and all Proposals.

12. Final Approval

Please note the bulk sale of tax liens is subject to final approval by the Mayor and the Rochester City Council.

ATTACHMENT 1

PURCHASE AND SALE AGREEMENT

by and between

THE CITY OF ROCHESTER

and

Dated as of December ____, 2013

TABLE OF CONTENTS

	Page
ARTICLE I	DEFINITIONS 1
Section 1.01.	Definitions..... 1
Section 1.02.	Other Definitional Provisions 4
ARTICLE II	CONVEYANCE OF TAX LIENS 5
Section 2.01.	Conveyance of Tax Liens 5
ARTICLE III	REMOVED LIENS..... 6
Section 3.01.	Removed Liens 6
Section 3.02.	Compensation for Removed Liens..... 7
Section 3.03.	[Intentionally Omitted] 7
ARTICLE IV	THE CITY 7
Section 4.01.	Representations and Warranties of the City as to itself 7
Section 4.02.	Representations and Warranties of the City with Respect to the Tax Liens 8
Section 4.03.	Covenants of the City..... 10
Section 4.04.	Indemnity by the City 11
Section 4.05.	Illegality 11
ARTICLE V	THE BUYER 11
Section 5.01.	Representations of Buyer 11
Section 5.02.	Indemnity by the Buyer 13
ARTICLE VI	[Intentionally Omitted] 13
ARTICLE VII	REPURCHASED TAX LIENS 13
Section 7.01.	Right to Repurchase..... 13
ARTICLE VIII	[Intentionally Omitted] 13
ARTICLE IX	FURTHER SALE OR ASSIGNMENT OF TAX LIENS 14
Section 9.01.	Sale to Third Parties..... 14
ARTICLE X	[Intentionally Omitted] 14

ARTICLE XI	ENFORCEMENT OF TAX LIENS	14
Section 11.01.	Election to Enforce	14
Section 11.02.	Notice of Election	14
Section 11.03.	Standards of Servicing	15
Section 11.04.	The Enforcement Proceeding.....	15
Section 11.05.	Legal Fees and Costs	15
Section 11.06	Separate Proceedings Required.....	15
ARTICLE XII	ADMINISTRATION OF ACCOUNTS	15
Section 12.01.	Duties of Buyer	15
Section 12.02.	Duties of the City	16
ARTICLE XIII	PAYMENT PLANS.....	17
Section 13.01.	Terms	17
ARTICLE XIV	[Intentionally Omitted]	17
ARTICLE XV	MISCELLANEOUS	18
Section 15.01.	Notices	18
Section 15.02.	Benefit of Agreement.....	18
Section 15.03.	Severability	18
Section 15.04.	Counterparts	18
Section 15.05.	Headings	18
Section 15.06.	Governing Law	18
Section 15.07.	Amendment; Waivers	18
ARTICLE XVI	EQUAL OPPORTUNITY	
Section 16.01.	General Policy.....	19
Section 16.02.	Definitions.....	19
Section 16.03.	Compliance	19
Section 16.04.	Failure to Comply	20

THIS PURCHASE AND SALE AGREEMENT is dated as of the ____ day of **December, 2013** (this "Agreement"), by and between the CITY OF ROCHESTER (the "City"), and _____ (the "Buyer").

WHEREAS, Buyer desires to purchase from the City certain Tax Liens (as defined herein) specified on Schedule B attached hereto, and the City is willing to sell such Tax Liens to Buyer;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto do hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions.

"Applicable Percentage Rate" is determined by dividing the Purchase Price by the total Redemptive Value of the Tax Liens set forth on Schedule B of this Agreement. **The Applicable Percentage Rate, as of the date of this Agreement, is _____ per cent (_____%).**

"Bankruptcy Tax Lien(s)" means any Tax Lien(s) in Schedule B which purportedly secure taxes on property that is part of the estate of a debtor in voluntary or involuntary bankruptcy proceedings as of the Closing Date, whether or not such Tax Lien(s) are void or voidable under applicable laws.

"Bankruptcy Tax Claim" means, with respect to a Bankruptcy Tax Lien, the claim applicable to such Bankruptcy Tax Lien as defined in Section 101(5) of the United States Bankruptcy Code.

"Charter" means Chapter 755 of the Laws of 1907 entitled "An Act Constituting the Charter of the City of Rochester" as amended from time to time and codified, and as further amended by the enactment of Local Law No. 8 of 2008 duly passed by the Council of the City of Rochester on November 25, 2008 and approved by the Mayor of the City of Rochester on December 9, 2008, and in particular Article VI, Parts E, F, and G, and Article IX Part E of the Charter. A copy of Article VI, Parts E, F, and G, and Article IX, Part E of the Charter is attached as **Schedule A** to this agreement. "Charter" shall also mean the authority and power of the City to levy and collect its taxes pursuant to the Charter and the laws of the State of New York.

"City" means the City of Rochester, New York.

"City Code" means the Municipal Code of the City of Rochester and all amendments thereto.

“City Treasurer” means the head of the City Bureau of Treasury, as defined in §6.3 of the Charter.

“**Closing Date**” means on or before December 31, 2013 or such earlier date as may be agreed to by the City and the Buyer.

“Delinquent Real Property Tax Liens” shall mean liens securing the annual taxes of the City of Rochester levied upon real estate which remain unpaid after the expiration of one year from the date upon which the taxes, including all items added thereto, local assessments and water rates became a lien, the lien created by the levy of the tax by the City Council, together with interest, fees and penalties, at the rates provided by the Charter.

“Department of Finance” means the department of the City responsible for the financial affairs of the City, all as set forth in Article VI of the Charter.

“Director of Finance” means the head of the Department of Finance in the City, as defined in §6.2 of the Charter, duly appointed and acting in accordance with the statutes of the State of New York and the Charter, to whom the Buyer’s bid was addressed, and all adjustments to the bid and adjustments subsequent to the execution of this Agreement shall be addressed.

“Encumbering Lien” means a security interest, lien, charge, pledge, equity or encumbrance of any kind, attaching to the interests of the City in and to the Tax Liens, whether or not as a result of any act or omission by the City.

“Laws” means all statutes, rules, regulations, ordinances, orders, or decrees of any federal or state government or political subdivision, agency or public official thereof, including all applicable debtor protection and consumer protection laws, and including the Charter of the City of Rochester, and the Municipal Code of the City of Rochester.

“Person” means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof.

“Proceeds” means, with respect to any Tax Lien that is liquidated, the proceeds realized in connection with such liquidation.

“Property” means the underlying parcel of real property encumbered by a Tax Lien.

“Property Owner” means, as to each Property, the owner(s) of record thereof.

“Purchase Price” means the amount reasonably determined by the City and the Buyer to be equivalent to Buyer’s bid for the Delinquent Real Property Tax Liens listed on a list prepared by the City Treasurer compiling all those tax liens which the City intended to make available to be considered for sale, including the Redemptive Value through the date of such list, and constituting the basis for computation of the Buyer’s bid, less the value of liens

removed by redemption or otherwise on or prior to the Closing Date, less payments received by the City on such listed tax liens on or prior to the Closing Date, plus interest accrued on such listed tax liens from the date such list was compiled to the Closing Date. The Purchase Price may be adjusted on and up to thirty (30) days after the Closing Date as necessary to reconcile the amount of such Purchase Price, payments and interest (collectively, the “Adjustments”) and to ensure that the Purchase Price is calculated on the Redemptive Value of all Tax Liens transferred to the Buyer as of the Closing Date. Adjustments shall be specifically limited to bad checks and payment timing. The amount of the Purchase Price paid on the Closing Date and any Adjustments thereto made within thirty (30) days following the Closing Date shall be documented by separate agreement executed by the City and the Buyer and appended to the Payment Instructions.

The Purchase Price, for the Tax Liens listed on Schedule B as of the date of this Agreement, is _____ DOLLARS (\$ _____), subject to the terms and conditions detailed herein.

“Redemptive Value” means, with respect to any Tax Lien, the full amount of the taxes secured by said lien, including all interest accrued as of any designated date, and if calculated after the commencement of a foreclosure action, the total amount required to redeem such Tax Lien in full on such date including reasonable attorneys’ fees, costs and expenses allowed by law.

“Related Property(ies)” means the underlying parcel of real property encumbered by a Tax Lien.

“Removed Tax Lien(s)” has the meaning assigned thereto in Section 3.01 hereof.

“Repurchased Tax Lien(s)” has the meaning assigned thereto in Section 7.01 hereof.

“Responsible Officer” means (i) with respect to the City, any official or officials of the City assigned responsibility for the performance of any or all of the City’s duties hereunder, and (ii) with respect to Buyer, the officer of the Buyer assigned the responsibility for the performance of its duties in connection with the transactions contemplated herein.

“Subsequent Delinquent Tax Lien(s)” means real property tax liens against properties in the City of Rochester securing the real property taxes of the City of Rochester

- (i) previously levied, but not yet delinquent, or
- (ii) which may be levied in the future

as and when such tax liens may become Delinquent Real Property Tax Liens.

“Subsequent Tax Lien(s)” means real property tax liens against properties in the City of Rochester securing the real property taxes of the City of Rochester for taxes previously levied, but not yet delinquent, or for taxes which may be levied in the future.

“State” means the State of New York.

“Statute(s)” means the Laws of the State of New York, as amended from time to time.

“Tax Lien(s)” means those Delinquent Real Property Tax Liens against the Related Properties set forth on Schedule B of this Agreement.

“Tax Lien Certificate(s)” shall mean the certificate or certificates issued by the City Treasurer upon the sale of Tax Liens pursuant to this Agreement, which the City Treasurer shall issue and deliver to the Buyer in accordance with §6-123 (E) of the Charter, identifying each of the Related Properties and the total Redemptive Value due for each Tax Lien as of the Closing Date. The City Treasurer shall retain a copy of each such certificate(s) in the City Treasurer’s office, and shall maintain records that will enable interested parties to determine which Tax Liens have been sold, to whom, and the total amount due on such liens at the time such Tax Liens were sold. The Buyer may record the certificate or certificates evidencing the purchase and sale of the Tax Liens in the Office of the Monroe County Clerk.

“Tax Lien Schedule” means **Schedule B** hereto, including the several sub-schedules thereto, consisting of the list of all Tax Liens to be sold as of the Closing Date, and the corresponding Redemptive Value for each Tax Lien, constituting the basis for computation of the Purchase Price. **The Total Redemptive Value of all of the Tax Liens on Schedule B, as of the Closing Date, is _____ DOLLARS (\$_____).**

“Transaction Document” means this Agreement, the Tax Lien Certificate(s) and any other agreement, instrument or document executed and delivered in connection with the foregoing.

Section 1.02. Other Definitional Provisions.

(a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.

(b) As used in this Agreement and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Agreement or in any such certificate or other document, and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under generally accepted accounting principles. To the extent that the definitions of accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under generally accepted accounting principles, the definitions contained in this Agreement or in any such certificate or other document shall control.

(c) The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; Article, Section, Schedule and Exhibit references contained in this Agreement are references to Articles, Sections, Schedules and Exhibits in or to this Agreement unless otherwise specified; the term “including” shall mean “including without limitation”; the term “to” a given date shall mean “to but not including” such date; and the term “through” a given date shall mean “through and including” such date.

(d) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(e) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified or supplemented in accordance with its terms and includes (i) in the case of agreements or instruments, references to all attachments thereto and instruments incorporated therein and (ii) in the case of statutes, any successor statutes; references to a Person are also to its permitted successors and assigns.

(f) The phrases “to the knowledge of the City,” “to the City’s knowledge,” “to the best knowledge of the City” or other similar phrase used herein or in any certificate delivered pursuant hereto, shall mean that a Responsible Officer of the applicable party had actual knowledge with respect to the information referred to in connection with such phrase.

ARTICLE II CONVEYANCE OF TAX LIENS

Section 2.01. Conveyance of Tax Liens. Subject to the terms and conditions of this Agreement, the City does hereby agree to sell, transfer, assign, set over and otherwise convey to Buyer, to the extent permitted and as provided by the terms of this Agreement and the Charter, upon payment of the Purchase Price on the Closing Date, all right, title and interest of the City on the Closing Date, whether now owned or hereinafter acquired, in, to and under:

- (a) the Tax Liens specified in respect of the City on Schedule B hereto;
- (b) the right to enforce such Tax Liens, as permitted by Article IX, Part E, Title 3 of the Charter;
- (c) all payments representing collections in respect of such Tax Liens, to the extent such collections have not previously been applied by the City to reduce the Redemptive Value of such Tax Liens prior to the Closing Date; and
- (d) the Proceeds of any and all of the foregoing.

Notwithstanding any provision of the Charter to the contrary, the Buyer shall be authorized to foreclose any Tax Lien acquired only by foreclosure in accordance with the

provisions of Article IX, Part E, Title 3 of the Charter, except that separate Tax Liens against separate parcels of land owned by different persons may not be foreclosed by the Buyer in one action, but must be foreclosed in separate actions.

Buyer hereby promises to pay to the City, by wire transfer or by immediately negotiable check drawn on a payor bank reasonably acceptable to the City, the Purchase Price, on the Closing Date upon delivery by the City to Buyer of the related Tax Lien Certificates.

As promptly as practicable following the Closing Date, the City shall cause the applicable records relating to the Tax Liens to be marked to show the sale and transfer of the Tax Liens to Buyer, and from and after the Closing Date the City shall not take any action inconsistent with Buyer's interest in the Tax Liens, other than as permitted by this Agreement. Buyer shall have the right to record the Tax Lien Certificate(s) in the Monroe County Clerk's Office.

ARTICLE III REMOVED LIENS

Section 3.01. Removed Liens. The Buyer or the City may remove any Tax Lien from this transaction, at any time prior to, on, or after the Closing Date, for one or more of the reasons set forth below, regardless of when such reason may have been first discovered or discoverable (each such removed Tax Lien being a "Removed Lien") and Buyer shall be entitled to receive compensation for such Removed Lien as provided in Section 3.02:

(A) The Redemptive Value has been fully paid and the Tax Lien has been satisfied on or prior to the Closing Date;

(B) The Tax Lien has been issued against the Related Property of a person or entity whose real property is exempt from property taxation in the State or the City under any applicable law or regulation;

(C) A United States Environmental Protection Agency or New York State Department of Environmental Conservation enforcement action or lien has been initiated or filed against the Related Property at any time prior to or on the Closing Date;

(D) There is a pending tax appeal or abatement action against the Related Property, which appeal or action was pending at any time prior to or on the Closing Date;

(E) The Related Property has come under the protection of an automatic stay in bankruptcy at any time prior to or on the Closing Date and the Buyer declares its intention to reject such Tax Lien for that reason;

(F) Schedule B incorrectly states the tax parcel identification number (SBL number) of the Related Property, the location of the Related Property, and/or the amount of the Redemptive Value of the Tax Liens;

(G) The Related Property is subject to a demolition order issued by the City pursuant to Chapter 47A of the City Code at any time prior to, on, or within two (2) years after the Closing Date, except for emergency demolition orders issued pursuant to §47A-16(C) of the City Code;

(H) The Tax Lien is the subject of an agreement with the City for the installment payment of delinquent taxes (commonly referred to as a tax payment agreement) which was not in default as of the Closing Date;

(I) With respect to a Bankruptcy Tax Lien, the City failed to timely file an adequate proof of claim or make other required filings prior to the Closing Date, or failed to cooperate with the Buyer with respect to the making of filings in Bankruptcy Court evidencing the assignment and transfer of the Tax Lien to Buyer, and the Tax Lien is impaired as a result of such failure, and the Buyer declares its intention to reject such Tax Lien for that reason;

(J) The Tax Lien is restricted in its enforcement, or the value of the Tax Lien is diminished or “crammed down”, by the provision of any bankruptcy law and the Buyer declares its intention to reject such Tax Lien for that reason;

(K) Any Tax Lien is finally determined to be not a valid, binding and enforceable obligation against the applicable Related Property for any reason as of the Closing Date, except for Tax Liens repurchased under Section 4.05.

Section 3.02. Compensation for Removed Liens. If any Tax Lien for which the Purchase Price has been paid to the City shall thereafter be removed from this transaction as provided in this Article III as a Removed Lien, the Buyer shall be entitled to receive from the City a refund in immediately available funds to be paid on or before the 30th day after removal of the Removed Lien equal to the Redemptive Value of the corresponding Removed Lien as of the date the Buyer shall receive such compensation.

Section 3.03. [Intentionally Omitted].

ARTICLE IV REPRESENTATIONS, WARRANTIES, COVENANTS AND INDEMNITIES OF THE CITY

Section 4.01. Representations of the City. The City makes the following representations and warranties, as to itself only, on which Buyer is relying in acquiring the Tax Liens. The representations and warranties are made as of the Closing Date, and shall survive the sale of the Tax Liens to Buyer pursuant hereto, and the pledge thereof by Buyer to Buyer’s lender.

(a) Power and Authority. The City is validly existing as a municipal corporation under the laws of the State of New York, including the Constitution of the State of New York, with full power and authority to execute and deliver this Agreement and any Transaction Documents to which it is a party and to carry out the provisions thereof in accordance with their respective terms; it has full power, authority and legal right to sell the Tax Liens being sold by it,

pursuant to and as provided by this Agreement and the other Transaction Documents, and it has duly authorized such sales by all necessary action; and the execution, delivery and performance of this Agreement and each other Transaction Document to which it is a party have been duly authorized by all necessary action on its part; and no consents or approvals are necessary in order for it to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to carry out the provisions thereof in accordance with their respective terms, except such consents and approvals which have been obtained and are in full force and effect.

(b) Binding Obligations. This Agreement and each other Transaction Document to which the City is a party constitute its legal, valid and binding obligations, enforceable against it in accordance with their respective terms.

(c) No Violation. The City's consummation of the transactions contemplated by this Agreement and the other Transaction Documents and the fulfillment of the terms hereof and thereof do not conflict with, result in any breach of any of, or constitute a default under, any of the material terms and provisions of any indenture, agreement or other instrument to which it is a party or by which it is bound, nor violate any federal, state or local law, statute, rule, regulation, ordinance or any order, ruling or decision of any federal, state or local court, administrative agency or regulatory body applicable to it.

(d) No Proceedings. There are no proceedings or investigations pending or threatened in writing against the City before any court, regulatory body, administrative agency or other governmental instrumentality (i) asserting the invalidity of any of the Transaction Documents, (ii) seeking to prevent the consummation of any of the transactions contemplated by any of the Transaction Documents, or (iii) seeking any determination or ruling that could reasonably be expected to materially and adversely affect the validity or enforceability of any of the Transaction Documents.

Section 4.02. Representations and Warranties of the City with respect to the Tax Liens.

The City hereby represents and warrants that as of the Closing Date (a) the information set forth in the Tax Lien Schedule as to the Tax Liens (including the Redemptive Value thereof) being sold by such City hereunder is true and correct as of the Closing Date, and (b) as to each Tax Lien transferred by such City hereunder, as of the Closing Date:

- (i) the City was the sole owner and holder of such Tax Lien;
- (ii) the City had full right, power and authority to sell such Tax Lien;
- (iii) the City sold such Tax Lien free and clear of any and all Encumbering Liens;
- (iv) the sale of such Tax Lien by the City did not violate, contravene or conflict with any federal, state, special or local law, statute, rule, regulation or ordinance, or any order, ruling or decision of any federal, state or local court, administrative agency or regulatory body, or any contractual or other restriction, limitation or encumbrance, in each case applicable to the City, and was effected in full compliance with all applicable Laws;

(v) the amounts secured by such Tax Lien were validly levied by the City in accordance with all provisions of federal, state and local laws, statutes, rules, regulations and ordinances, and all orders, rulings and decisions of any federal, state or local court, administrative agency or regulatory body, in each case applicable to the City;

(vi) such Tax Lien is a legal, valid, binding and enforceable lien on the related Property;

(vii) except for Subsequent Tax Liens, such Tax Lien represents a first priority lien on the underlying Property;

(viii) interest payable on the Tax Lien has properly and lawfully accrued through the Closing Date as specified in respect of such Tax Lien on the Tax Lien Schedule;

(ix) such Tax Lien has not been compromised, adjusted or modified (including by statute or administrative action, or by extension of time, or payment, or the granting of any discounts, allowances or credits or pursuant to any forbearance or installment payment agreements);

(x) the Property is not, to the knowledge of the City, subject to an enforcement action or lien in favor of the United States Environmental Protection Agency or the New York State Department of Environmental Conservation;

(xi) each Tax Lien is enforceable pursuant to the procedure prescribed by Article IX, Part E, Title 3 of the Charter, as amended by Local Law No. 8 of 2008, provided however, that notwithstanding any provision of this Agreement or the Charter to the contrary, separate Tax Liens against separate parcels of land owned by different persons may not be foreclosed by the Buyer in one action, but must be foreclosed in separate actions.

(xii) the interest rate applicable to such Tax Lien is specified by §6-111 of the Charter;

(xiii) such Tax Lien, together with the other Tax Liens referenced on Schedule B, represent all of the outstanding Delinquent Real Property Tax Liens levied against the Property as of the Closing Date.

(xiv) a true copy of Article VI, Parts E, F, and G, and Article IX Part E of the Charter, as amended by Local Law No. 8 of 2008 is attached as Schedule A to this agreement and such Local Law No. 8 was duly and properly enacted and has not been repealed or revised as of the Closing Date.

Section 4.03. Covenants of the City.

(a) Protection of Title. Etc. The City shall take all actions as may be reasonably required fully to preserve, maintain, defend, protect and confirm the interest of Buyer and

Buyer's lenders in the Tax Liens and the proceeds thereof, including, without limitation and upon the request of Buyer, the defense of legal challenges to the matters contemplated by this Agreement. The City shall cooperate fully with Buyer as may reasonably be required by Buyer to exercise any rights granted or conveyed by the City to Buyer under this Agreement. The City shall keep full records as to its sale of Tax Liens pursuant hereto, including the notice furnished to the Property Owners and other interested parties pursuant to the Charter.

(b) Notice of Intent to Foreclose. The City, thirty (30) days prior to the commencement of any foreclosure action pursuant to the Charter of any Subsequent Delinquent Tax Lien(s) on any Related Property before the principal balance of any Tax Lien sold herein with respect thereto has been reduced to zero, shall provide the Buyer with a notice of intent to foreclose the Subsequent Delinquent Tax Lien(s). Said notice shall set forth the name of the Property Owner, the Property address, the SBL number, and the Redemptive Value of all Subsequent Delinquent Tax Lien(s) on the Property, with all accrued interest at the time of the notice.

The City shall provide the notice of intent to foreclose to the Buyer by certified mail, return receipt requested. Such notice shall be in addition to the notice required by Article IX, Part E, Title 4 of the Charter. Any failure by the City to provide notice of intent to foreclose any Subsequent Delinquent Tax Lien(s) pursuant to this Section 4.03 shall not affect the validity of any foreclosure action commenced by the City pursuant to the Charter or the validity of any deed issued by the Corporation Counsel pursuant to said action.

(c) Pending Foreclosure Actions. The City shall discontinue any and all *in rem* actions pending on the Closing Date as to any Property subject to a Tax Lien. The City hereby further agrees that it will not cancel or reduce, or cause or permit the cancellation or reduction of, any taxes, interest, penalties or other charges imposed by Law in respect of the Tax Liens sold by it hereunder, or enter into any forbearance or installment payment agreement in respect of the Tax Liens sold by it hereunder, or execute, deliver or file any release, assignment or other disposition of a Tax Lien until such time as the Tax Lien Principal Balance with respect thereto has been reduced to zero.

(d) Further Assurance.

(i) The City agrees (A) to make its appropriate personnel with knowledge of the Tax Liens being sold by the City hereunder reasonably available to Buyer, upon request of Buyer, during normal business hours and at the customary place of business of such personnel, for consultation with Buyer's personnel in respect of such Tax Liens, and (B) to make available to Buyer, upon request of Buyer and during normal business hours, the City's books and records relating to the Tax Liens sold by it hereunder.

(ii) The City shall otherwise cooperate in all reasonable respects with Buyer in connection with the Buyer's servicing of the Tax Liens being sold by the City hereunder, including (A) making the appropriate personnel available, as may reasonably be requested by Buyer, to participate in court proceedings relating to the Tax Liens sold by the City, (B) in respect of the assignment of all Bankruptcy Tax Claims relating to Tax Liens being sold

hereunder to Buyer and (C) in connection with the foreclosure of any tax liens (other than the Tax Liens) on Properties subject to the Tax Liens, whether such tax liens are held by the City or another taxing jurisdiction, cooperating with Buyer, including exercising any rights the Buyer may have under agreements with such other taxing jurisdiction, to ensure that such foreclosure is conducted in such a manner as to protect the rights of Buyer in its proper share of the proceeds of foreclosure.

(iii) The City shall from time to time upon the reasonable request of Buyer execute and deliver all such supplements and amendments to this Agreement, and all such financing statements, continuation statements, instruments of further assurance and other instruments, and shall take such other action as may be reasonably necessary or desirable to: (A) carry out more effectively the provisions and purposes of this Agreement and of the other Transaction Documents, and (B) preserve and defend title to the Tax Liens, the Tax Lien Certificates evidencing same, and the rights of Buyer in and to the Tax Liens and such Tax Lien Certificates against the claims of all other persons and parties.

Section 4.04. Indemnity by the City. The City shall indemnify, defend and hold harmless Buyer and its respective officers, directors, employees, lenders, assignees and agents, to the fullest extent permitted by applicable law, from and against any and all costs, expenses, losses, claims, damages and liabilities, including reasonable attorneys fees and expenses, (collectively, "Losses") to the extent that any such Loss arose out of, or was imposed upon any such Person through: (i) a breach by the City of any of its representations and warranties set forth in Section 4.01 or Section 4.02 hereof, (ii) a failure by the City to comply with any of its covenants set forth in Section 4.03 hereof, (iii) a failure by the City to perform any of its other obligations hereunder (including under Sections 2.01) or under any other Transaction Document to which it is a party, or (iv) the gross negligence or willful misconduct of the such City in the performance of its duties under this Agreement.

Section 4.05. Illegality. If the validity of this Agreement or the Sale of any Tax Liens hereunder to the Buyer is for any reason contested in a court of competent jurisdiction after the Closing Date by a party other than the Buyer or any party related to the Buyer and such court rules (a) that the Agreement or the Sale of the Tax Liens hereunder is unconstitutional, illegal or void and (b) enjoins the collection by and for the benefit of the Buyer of any Tax Liens hereunder sold, and (c) such injunction is not stayed within sixty (60) days of its having been granted, then the City, but subject to the limitations in this Article IV, shall repurchase any such Tax Liens sold to the Buyer that have not previously been satisfied. The Repurchase Price shall be not less than the original Purchase Price, less payments received to the date of such repurchase, plus reasonable attorneys' fees, legal costs, allowances, or disbursements incurred in a foreclosure action, plus interest at prime rate from the Closing Date to the date of such repurchase.

ARTICLE V REPRESENTATIONS AND INDEMNITY OF THE BUYER

Section 5.01. Representations of Buyer. Buyer makes the following representations and warranties, as to itself only, on which the City is relying in selling the Tax Liens. The

representations and warranties shall be effective as of the Closing Date, and shall survive the sale of the Tax Liens by the City pursuant hereto.

(a) Organization. Buyer is a _____ duly organized, validly existing and in good standing under the laws of the state of _____ and is duly authorized to do business as it is now being conducted and is in good standing as a _____ in New York.

(b) Power and Authority. Buyer has full power and authority to execute and deliver this Agreement and any Transaction Documents to which the Buyer is a party and to carry out the provisions thereof in accordance with their respective terms; the Buyer has full power, authority and legal right to purchase the Tax Liens being acquired by the Buyer, pursuant to and as provided by this Agreement and the other Transaction Documents, and it has duly authorized such purchase by all necessary action; and the execution, delivery and performance of this Agreement and each other Transaction Document to which the Buyer is a party have been duly authorized by all necessary action on its part; and no consents or approvals are necessary in order for the Buyer to execute and deliver this Agreement and the other Transaction Documents to which the Buyer is a party and to carry out the provisions thereof in accordance with their respective terms, except such consents and approvals which have been obtained and are in full force and effect.

(c) Binding Obligations. This Agreement and each other Transaction Document to which the Buyer is a party constitute its legal, valid and binding obligations, enforceable against the Buyer in accordance with their respective terms.

(d) No Violation. The Buyer's consummation of the transactions contemplated by this Agreement and the other Transaction Documents and the fulfillment of the terms hereof and thereof do not conflict with, result in any breach of any of, or constitute a default under, any of the material terms and provisions of any indenture, agreement or other instrument to which the Buyer is a party or by which the Buyer is bound, nor violate any federal, state or local law, statute, rule, regulation, ordinance or any order, ruling or decision of any federal, state or local court, administrative agency or regulatory body applicable to the Buyer.

(e) No Proceedings. There are no proceedings or investigations pending or threatened in writing against the Buyer before any court, regulatory body, administrative agency or other governmental instrumentality (i) asserting the invalidity of any of the Transaction Documents, (ii) seeking to prevent the consummation of any of the transactions contemplated by any of the Transaction Documents, or (iii) seeking any determination or ruling that could reasonably be expected to materially and adversely affect the validity or enforceability of any of the Transaction Documents.

(f) Priority of Liens. Buyer acknowledges that pursuant to Section 9-80 of the Charter Subsequent Tax Liens shall have priority over the Tax Liens sold pursuant to this Agreement.

Section 5.02. Indemnity by the Buyer. The Buyer agrees to indemnify and hold harmless the City and its officials, employees and agents for losses, costs and expenses arising out of or relating to:

(a) Any breach of the Buyer's representations, warranties and covenants set forth in this purchase and sale agreement; and

(b) Any claims or litigation brought against the City solely out of the violation of this Agreement or any applicable law with respect to the Buyer's collection or enforcement of the Tax Liens caused by the Buyer's gross negligence or willful misconduct.

ARTICLE VI
[Intentionally Omitted]

ARTICLE VII
REPURCHASED TAX LIENS

Section 7.01 Right to Repurchase. Subject to the provisions set forth below the City may, at any time, elect to repurchase from Buyer any Tax Lien (each a "Repurchased Tax Lien"). The aggregate Redemptive Value of all Tax Liens available for repurchase by the City pursuant to this Section 7.01 shall not exceed ten percent (10%) of the Purchase Price.

The cost of repurchase pursuant to this Section 7.01 (the "Repurchase Price") shall be a sum equal to:

(a) The Applicable Percentage Rate multiplied by the Redemptive Value of such Tax Lien as of the time of repurchase; plus

(b) Buyer's reasonable attorney's fees, legal costs, allowances and disbursements, if Buyer has commenced an action to foreclose such Tax Lien pursuant to the procedure prescribed by Article IX, Part E, Title 3 of the Charter.

Upon payment of the Repurchase Price, Buyer shall deliver or cause to be delivered to the applicable City the related Tax Lien, and any instruments of release, transfer or assignment as shall be requested by the City to vest in such City all right, title and interest to such Repurchased Tax Lien, whereupon Buyer shall have no further rights or responsibilities with regard to such Repurchased Tax Lien.

ARTICLE VIII
[Intentionally Omitted]

ARTICLE IX
FURTHER SALE OR ASSIGNMENT OF TAX LIENS

Section 9.01. Consent of City Required. The Buyer may not assign, sell, or conditionally assign or sell any or all of its interests, rights and obligations under this Agreement with respect to the Tax Liens without the approval of the Director of Finance.

a) Any such assignment under this Agreement such assignment shall only be for the purpose of financing the purchase of the Tax Liens.

(b) Such assignment shall only be permitted if:

- (1) the Buyer retains all servicing on behalf of any such assignee;
- (2) all enforcement is conducted in the name of the Buyer;
- (3) all communication is conducted in the name of the Buyer.

Provided, further that the Director of Finance may consent to the use of a “lockbox” in the name of the approved assignee.

ARTICLE X
[Intentionally Omitted]

ARTICLE XI
ENFORCEMENT OF TAX LIENS

Section 11.01. Election to Enforce. Subject to the City’s Right of Repurchase, Buyer shall have the exclusive authority to determine the selection of those Tax Liens to be enforced.

Section 11.02. Notice of Election. The Buyer shall, prior to the commencement of a foreclosure action pursuant to Article IX, Part E, Title 3 of the Charter, provide the City Treasurer with a notice of intent to foreclose the Tax Lien. Said notice shall set forth the Property Owners, the Property address, the SBL number, and the Redemptive Value of all Tax Liens on the Property, with all accrued interest at the time of the notice. The City may, at its sole option and discretion, elect to repurchase the Tax Lien(s) on the property from the Buyer (the “City’s Right of Repurchase”). The repurchase price shall be the Redemptive Value of such Tax Lien(s) as of the time of repurchase. The Buyer shall provide the notice of intent to foreclose to the City Treasurer by certified mail, return receipt requested, and the City shall have thirty (30) days from receipt of such notice to notify the Buyer of the City’s election to repurchase said Tax Lien(s). If the City elects to repurchase said Tax Lien(s), then the City shall provide payment to the Buyer within thirty (30) days of the City’s exercise of its option to repurchase said Tax Lien(s). If the City shall fail to notify the Buyer of the City’s election to repurchase the Tax Lien(s) within said thirty (30) day period, the Buyer shall immediately have the right to commence a foreclosure action pursuant to Article IX, Part E, Title 3 of the Charter. The

plaintiff in any action to foreclose a Tax Lien shall affirmatively plead compliance with §9-104 of the Charter.

Section 11.03. Standards of Servicing. Until such time as there shall remain no unredeemed Tax Liens, Buyer shall maintain the staffing levels of its offices at levels sufficient to adequately service the unredeemed Tax Liens. For purposes of this Agreement, “adequate servicing” by Buyer shall include maintaining a toll-free (800/888) long distance phone number with multiple lines and a message queue for callers who are not directly connected to a customer representative of the Buyer during ordinary office hours. At all times during the term of this Agreement, the Buyer shall engage the services of a local property manager. Buyer shall provide quarterly reports that include status reports on all Tax Liens indicating whether such Tax Liens have been redeemed, are in foreclosure, or under an installment payment plan, together with a report indicating the occupancy status and maintenance schedules of foreclosed properties owned by the Buyer. Buyer shall provide to the City necessary software and adequate training for online access to the status of Tax Liens held by Buyer. The Buyer shall also provide a website for account information with the ability to make payments online.

Section 11.04. The Enforcement Proceeding. The Tax Liens shall be enforced pursuant to the procedure prescribed by Article IX, Part E, Title 3 of the Charter, except that separate tax liens against separate parcels of land owned by different persons may not be foreclosed by the Buyer in one action, but must be foreclosed in separate actions. In the event the City shall be a party to any such enforcement proceeding, service of process shall be accepted by the City at the office of the Corporation Counsel. If a defendant in said action shall assert a defense relating to an alleged defect in the assessment, levy or collection of the Tax Lien or with respect to an action taken by the City relating to the assessment, levy or collection of such Tax Lien, the City, upon the request of Buyer, shall cooperate with and assist Buyer in responding to any such claims by making available to Buyer such records or documents in the possession or control of City reasonably related to the matter and shall reasonably assist Buyer’s counsel in the preparation of appropriate responsive pleadings as the same may relate to the actions of the City, all without cost to Buyer. If a defendant in said action shall assert a defense relating to the existence or proper exercise of the authority of the City to assign the Tax Lien, the City, upon the request of Buyer, shall join such action and shall provide, at the City’s expense, timely legal services sufficient to adequately respond to such asserted defense.

Section 11.05. Legal Fees and Costs. In any action to foreclose a Tax Lien pursuant to the procedure prescribed by Article IX, Part E, Title 3 of the Charter, the plaintiff shall be entitled to reasonable attorney’s fees, legal costs, allowances and disbursements.

Section 11.06. Separate Proceedings Required. Separate tax liens against separate parcels of land owned by different persons may not be foreclosed by the Buyer in one action, but must be foreclosed in separate actions.

ARTICLE XII ADMINISTRATION OF ACCOUNTS

Section 12.01. Duties of Buyer. Except as otherwise set forth in this Agreement, all

duties and obligations with respect to collection, enforcement and administration of the Tax Liens shall, subsequent to the Closing Date, be assumed by Buyer. Until such time as there shall remain no unredeemed Tax Liens held by Buyer, Buyer shall:

- (a) upon request of the City, provide a full and final accounting, in a form acceptable to the City, of the final disposition of each Tax Lien.
- (b) remain duly organized and in good standing under the laws of the state of its organization and duly registered with the New York Secretary of the State.
- (c) appoint in the State, the Secretary of the State to accept service of process on its behalf.
- (d) maintain with the City a valid certificate setting forth the current address of Buyer for purposes of receiving collections of or notices relating to the Tax Liens and identifying any agent designated by the Buyer to receive such payments or notices.
- (e) notify the City, within thirty (30) business days of the date of receipt, of payment in full with respect to any Tax Lien.
- (f) apply payments of taxes and interest in a chronological order with the oldest tax being paid first, and within each such year, in the following order: first to interest and then to principal with the oldest interest paid first, then the oldest principal. Any remaining payment after full payment of such interest and principal shall be applied in the same manner against the amounts due with respect to the next oldest Tax Lien.
- (g) Cooperate with the City to effectuate and properly evidence in all bankruptcy proceedings the assignment and transfer to the City of any Bankruptcy Tax Claims relating to the tax liens held by the City.

Section 12.02. Duties of the City. Until there shall be no unredeemed Tax Liens held by Buyer:

- (a) The City shall direct appropriate City personnel to cooperate with and assist Buyer in completing the transaction contemplated by this Agreement. Such cooperation and assistance shall include preparing and providing information necessary to prepare documents of transfer and, to the extent available in records of the City, calculating amounts of all Tax Liens as of the Closing Date, obtaining addresses of property owners or any other information appropriate to completing the Transaction Documents, and otherwise assisting Buyer prior to the Closing Date.
- (b) Upon execution and delivery to Buyer of the Transaction Documents and payment to the City of the Purchase Price due on the Closing Date for the Tax Liens, the City shall take no further action to collect payments or to enforce the Tax Liens.

(c) In the event the City shall receive payment of a current tax bill with respect to a Property upon which Buyer holds a Tax Lien, the City shall provide notice to the Property Owner and the paying party of the existence of the Tax Liens held by Buyer. Failure to so provide notice of such Tax Liens shall not invalidate any Tax Lien, nor shall it delay or prevent the enforcement of such Tax Lien.

(d) In the event a Property Owner, or any other party, attempts to tender to the City a payment with respect to any Tax Lien, the City shall direct such party to send such payment directly to the Buyer.

(e) The City shall cooperate with Buyer to effectuate and properly evidence in all bankruptcy proceedings the assignment and transfer to Buyer of any Bankruptcy Tax Claims relating to the Tax Liens.

(f) On or before the Closing Date, the City shall cause its records relating to the Tax Liens being sold by it hereunder, including all records available to the public, to be marked to show the sale by it of such Tax Liens to Buyer and the interest of Buyer's lenders and setting forth the name and address of Buyer and Buyer's lenders, all in such form and format as shall be acceptable to Buyer and Buyer's lenders, and from and after the Closing Date the City shall not take any action inconsistent with Buyer's ownership of such Tax Liens.

(g) In the event that the City shall receive any legal notifications or process relating to a Tax Lien or any property underlying a Tax Lien, the City shall promptly, and in no event later than two Business Days following its receipt thereof, forward a copy of such notification or process to Buyer.

(h) In the event that the Buyer shall receive any legal notifications or process relating to a Tax Lien or any property underlying a Tax Lien, the Buyer shall promptly, and in no event later than two Business Days following its receipt thereof, forward a copy of such notification or process to the City.

ARTICLE XIII PAYMENT PLANS

Section 13.01. Terms. The City agrees that Buyer may, at Buyer's discretion, accept partial payments and enter into installment payment agreements with Property Owners on such terms and conditions as Buyer shall deem advisable, without regard to any restrictions that might be applicable to payment plans entered into by the City, provided that the rate of interest for Tax Liens purchased shall not exceed the rate of interest for tax liens set forth in §6-111 of the Charter, and provided further that the Buyer may not collect or charge reasonable attorneys' fees, legal costs, allowances, or disbursements except following the commencement of an action to foreclose the Tax Lien.

ARTICLE XIV [Intentionally Omitted]

ARTICLE XV
MISCELLANEOUS

Section 15.01. Notices. All notices required to be given under this Agreement shall be given by personal delivery or Certified or Registered Mail, or via Overnight Delivery Service, addressed to the proper party at the addresses forth below, or at any other address as may be subsequently given pursuant to this Section, and shall be deemed given when deposited in the U.S. mails, postage prepaid, or deposited with an overnight courier.

Buyer:

With a copy to:

City: Director of Finance
#109A, City Hall
30 Church Street
Rochester, New York 14614

With a copy to: Corporation Counsel
#400A, City Hall
30 Church Street,
Rochester, New York 14614

Section 15.02. Benefit of Agreement. This Agreement and all of the rights and obligations hereunder shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

Section 15.03. Severability. If any one or more of the provisions or terms of this Agreement shall be held invalid for any reason whatsoever, then such provisions or terms shall be ineffective to the extent of such invalidity or unenforceability, shall be deemed void and severable from the remaining provisions and terms of this Agreement, and shall not affect the validity or enforceability of such other provisions or terms herein.

Section 15.04. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 15.05. Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 15.06. Governing Law. This Agreement shall be construed in accordance with the laws of the State of New York, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws. The parties hereto agree that any and all claims asserted by or against the City arising

under this Agreement or related thereto shall be heard and determined in any federal or state court located in the County of Monroe, State of New York.

Section 15.07. Amendments; Waivers. This Agreement may be amended or terminated only by a writing signed by both parties hereto. Compliance with any provision hereof may not be waived by the Buyer or by the City, unless such amendment or waiver is consented to in writing by the Buyer and by the City.

ARTICLE XVI EQUAL OPPORTUNITY

Section 16.01. General Policy. The City of Rochester, New York reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Opportunity, in accordance with the requirements set forth herein. The City further does not discriminate on the basis of disability, in admission or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall comply with all State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

Section 16.02. Definitions.

GOOD FAITH EFFORT - shall mean every reasonable attempt to comply with the provisions of this policy by making every reasonable effort to achieve a level of employment of minority groups and female workers that is consistent with their presence in the local work force.

MINORITY GROUP PERSONS - shall mean a person of Black, Spanish surname American, Asian American or American Indian ethnic or racial origin and identity.

Section 16.03. Compliance. Buyer shall comply with all of the following provisions of this Equal Opportunity Requirement:

a. The Buyer shall not discriminate on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status in the performance of services or programs pursuant to this agreement. Buyer agrees to make a good faith effort to employ minority group persons and females and that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, Buyer, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status discriminate against any person who is qualified and available to perform the work to which the employment relates. Buyer agrees to take affirmative action to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship. Buyer agrees to

post notices in conspicuous places available to employees and applicants for employment, and to include language in all solicitations or advertisements for employment placed by or on behalf of Buyer, reflecting this nondiscrimination policy.

Section 16.04. Failure to Comply. Notwithstanding anything herein to the contrary, the failure of Buyer to comply with this Article XVI shall not constitute a default under this Agreement and nothing herein shall give rise to a cause of action under this Agreement in favor of the City or any other person and nothing in this Article XVI, whether express or implied, shall be construed to give to any Person any legal or equitable right, remedy or claim under or in respect of this Article XVI.

[END OF PAGE -SIGNATURES FOLLOW IMMEDIATELY ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

CITY OF ROCHESTER

By: _____
Name: Thomas S. Richards
Title: Mayor

By: _____
Name:
Title:

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

On the ___ day of December in the year 2013 before me, the undersigned, a Notary Public in and for said State, personally appeared **THOMAS S. RICHARDS**, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF _____)
COUNTY OF _____) ss:

On the ___ day of December in the year 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public