



## BOARD OF ESTIMATE AND CONTRACT

**Jacqueline M. Izzo**  
Mayor

**Stephanie Viscelli**  
Common Council President

**Frederick Schmidt**  
Public Works Commissioner

**Louise S. Glasso**  
City Clerk

**Gerard F. Feeney**  
Corporation Counsel

**David C. Nolan**  
City Treasurer

Rome City Hall  
198 N. Washington St.  
Rome, NY 13440  
www.romenewyork.com

### BOARD OF ESTIMATE AND CONTRACT MEETING REGULAR SESSION

**OCTOBER 13, 2016**  
**8:30 AM**

1. **CALLING THE ROLL OF MEMBERS BY THE CLERK**
2. **READING OF THE MINUTES OF THE PRECEDING SESSION**  
(Motion in order that the reading of the minutes of the preceding session be dispensed with and that they be approved.)
3. **COMMUNICATIONS**
4. **PUBLIC SPEAKERS**
5. **REPORT OF DEPARTMENT HEADS**
6. **RESOLUTIONS**

**RES. NO. 190**

**A**

**AUTHORIZING THE CITY CLERK TO ADVERTISE FOR BIDS FOR A MOBILE LAW ENFORCEMENT AUTOMATED LICENSE PLATE RECOGNITION SYSTEM. Beach**

**RES. NO. 191**

**B**

**AUTHORIZING THE CITY CLERK TO ADVERTISE FOR BIDS FOR THE RE-PHASE II WATER EXPANSION PROJECT—CONTRACT 8 DISTRIBUTION MAINS. Schmidt**

**RES. NO. 192**

**C**

**AUTHORIZING 2016 BUDGETARY TRANSFERS. Nolan**

**RES. NO. 193**

**D**

**AUTHORIZING THE MAYOR OF THE CITY OF ROME TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH AMERICAN FIREWORKS MFG. CO., INC. FOR FIREWORKS TO BE DISPLAYED AT THE HOLIDAY CHRISTMAS TREE LIGHTING EVENT ON NOVEMBER 25, 2016 (\$1,500.00). Korpela**

**RES. NO. 194**

**F**

**AUTHORIZING THE MAYOR OF THE CITY OF ROME TO ENTER INTO AN AGREEMENT WITH COMMERCIAL INSTRUMENTS & ALARM SYSTEMS, INC. (\$17,536.20). Brement**

**RES. NO. 195**

**H**

**AUTHORIZING THE APPOINTMENT OF DENNIS GILLEN TO HOUSING INSPECTOR (GRADE 112 – STEP 4). Domenico**

**RES. NO. 196**

**I**

**AMENDING RESOLUTION NO. 87 ADOPTED APRIL 14, 2016 REGARDING A PROFESSIONAL SERVICES AGREEMENT WITH BOND SCHOENECK AND KING (\$2,499.25). Feeney**

**RES. NO. 197**

**J**

**RESOLUTION CONCERNING THE ESTABLISHMENT OF THE GREATER MOHAWK VALLEY LAND BANK CORPORATION AND APPOINTING REPRESENTATIVE TO SERVE ON GREATER MOHAWK VALLEY LAND BANK BOARD. Domenico**

**7. TABLED RESOLUTIONS**

**RES. NO. 49**

**G**

**AUTHORIZING BUDGETARY TRANSFER. Nolan**

**8. ADJOURNMENT**

RESOLUTION NO. 190

AUTHORIZING THE CITY CLERK TO ADVERTISE FOR BIDS FOR A MOBILE LAW ENFORCEMENT AUTOMATED LICENSE PLATE RECOGNITION SYSTEM

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

BE IT RESOLVED, by the Board of Estimate and Contract of the City of Rome, New York, that the City Clerk is hereby authorized and directed to advertise for bids for a mobile law enforcement automated license plate recognition system; and

BE IT FURTHER RESOLVED, that such bids shall be returned to the Office of the City Clerk, 1st floor, Rome City Hall, no later than 3:00 p.m. on October 27, 2016, said bids to be opened in the Common Council Chambers, 2<sup>nd</sup> floor, Rome City Hall, at 3:00 p.m., by the Purchasing Agent on the same date; and

BE IT FURTHER RESOLVED, that the City of Rome reserves the right to reject any and all bids deemed not to be in the best interests of the City of Rome.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Izzo \_\_\_\_\_ Viscelli \_\_\_\_\_ Feeney \_\_\_\_\_  
Schmidt \_\_\_\_\_ Nolan \_\_\_\_\_

ADOPTED:

DEFEATED:

RESOLUTION NO. 191

AUTHORIZING THE CITY CLERK TO ADVERTISE FOR BIDS FOR THE RE-PHASE II WATER EXPANSION PROJECT—CONTRACT 8 DISTRIBUTION MAINS

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

BE IT RESOLVED, by the Board of Estimate and Contract of the City of Rome, New York, that the City Clerk is hereby authorized and directed to advertise for bids for the Re-Phase II Water Expansion Project—Contract 8 Distribution Mains; and

BE IT FURTHER RESOLVED, that such bids shall be returned to the Office of the City Clerk, 1st floor, Rome City Hall, no later than 3:00 p.m. on November 15, 2016, said bids to be opened in the Common Council Chambers, 2<sup>nd</sup> floor, Rome City Hall, at 3:00 p.m., by the Purchasing Agent on the same date; and

BE IT FURTHER RESOLVED, that the City of Rome reserves the right to reject any and all bids deemed not to be in the best interests of the City of Rome.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Izzo \_\_\_\_\_ Viscelli \_\_\_\_\_ Feeney \_\_\_\_\_  
Schmidt \_\_\_\_\_ Nolan \_\_\_\_\_

ADOPTED: DEFEATED:

## RESOLUTION NO. 192

AUTHORIZING 2016 BUDGETARY TRANSFERS

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

BE IT RESOLVED, that pursuant to Rome Charter Laws, Title A, Article VII, Section 91, the City Treasurer of the City of Rome is hereby authorized and directed to make the following budgetary transfers:

<u>FROM CODE NO.</u>		<u>AMOUNT</u>
AG1325.151	Treasury: Salaries	\$2,000.00

<u>TO CODE NO.</u>		<u>AMOUNT</u>
AG1325.153	Treasurers: Overtime	\$2,000.00

**REASON: Cover overtime expenses due to illness in the Payroll Office.**

<u>FROM CODE NO.</u>		<u>AMOUNT</u>
AG1325.801	Treasury: FICA	\$1,000.00
AG1325.416	Treasury: Advertising & Printing	\$1,000.00

<u>TO CODE NO.</u>		<u>AMOUNT</u>
AG1325.418	Treasurers: Contract Services	\$2,000.00

**REASON: Cover increase cost of tax bills due to changes required for continuing of lock box processing by our bank.**

<u>FROM CODE NO.</u>		<u>AMOUNT</u>
AG1410.409	Clerk: Travel & Conferences	\$200.00

<u>TO CODE NO.</u>		<u>AMOUNT</u>
AG1410.153	Clerk: Overtime	\$200.00

**REASON: Cover cost of overtime in Clerk's Office.**

<u>FROM CODE NO.</u>		<u>AMOUNT</u>
AG5138.151	Electrical: Salaries	\$900.00

<u>TO CODE NO.</u>		<u>AMOUNT</u>
AG5138.153	Electrical: Overtime	\$900.00

**REASON: Cover overtime in Electrical Department due to one retirement in the department earlier this year.**

<u>FROM CODE NO.</u>		<u>AMOUNT</u>
AG7180.151	Pools: Salaries	\$1,825.00

<u>TO CODE NO.</u>		<u>AMOUNT</u>
AG7180.153	Pools: Overtime	\$1,825.00

**REASON: Cover overtime in Pools due to shortage of lifeguards.**

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Izzo \_\_\_\_\_ Viscelli \_\_\_\_\_ Feeney \_\_\_\_\_  
Schmidt \_\_\_\_\_ Nolan \_\_\_\_\_

ADOPTED:

DEFEATED:

RESOLUTION NO. 193

AUTHORIZING THE MAYOR OF THE CITY OF ROME TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH AMERICAN FIREWORKS MFG. CO., INC. FOR FIREWORKS TO BE DISPLAYED AT THE HOLIDAY CHRISTMAS TREE LIGHTING EVENT ON NOVEMBER 25, 2016 (\$1,500.00)

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

WHEREAS, James Korpela, Director of Parks and Recreation for the City of Rome, has recommended that the City of Rome retain the professional services of American Fireworks Mfg. Co., Inc. of Utica, New York, to provide a fireworks display at the Holiday Christmas Tree Lighting event scheduled to be held on November 25, 2016; now, therefore,

BE IT RESOLVED, by the Board of Estimate and Contract of the City of Rome, New York, that it does hereby authorize the Mayor of the City of Rome, New York, to enter into a professional services agreement with American Fireworks Mfg. Co., Inc. of Utica, New York, to provide a fireworks display during the Holiday Christmas Tree Lighting event scheduled to be held on November 25, 2016; and

BE IT FURTHER RESOLVED, that the costs associated with the aforementioned professional services shall not exceed \$1,500.00.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Izzo \_\_\_\_\_ Viscelli \_\_\_\_\_ Feeney \_\_\_\_\_  
Schmidt \_\_\_\_\_ Nolan \_\_\_\_\_

ADOPTED: DEFEATED:

RESOLUTION NO. 194

AUTHORIZING THE MAYOR OF THE CITY OF ROME TO ENTER INTO  
AN AGREEMENT WITH COMMERCIAL INSTRUMENTS  
& ALARM SYSTEMS, INC. (\$17,536.20)

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

WHEREAS, Ronald Bremont, Chief of the City of Rome Fire Department, has recommended that the City of Rome retain the services of Commercial Instruments & Alarm Systems, Inc., for standard video surveillance systems installation for the City of Rome Fire Department, at an amount not to exceed \$17,536.20; now, therefore,

BE IT RESOLVED, by the Board of Estimate and Contract of the City of Rome, New York, that it does hereby authorize the Mayor of the City of Rome, New York, to enter into an agreement with Commercial Instruments & Alarm Systems, Inc. to for standard video surveillance system installation for the City of Rome Fire Department at an amount not to exceed \$17,536.20; and

BE IT FURTHER RESOLVED, that the costs associated with the aforementioned professional services shall not exceed \$17,536.20.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Izzo \_\_\_\_\_ Viscelli \_\_\_\_\_ Feeney \_\_\_\_\_  
Schmidt \_\_\_\_\_ Nolan \_\_\_\_\_

ADOPTED: DEFEATED:

**COMMERCIAL INSTRUMENTS & ALARM SYSTEMS, INC.**  
2 Summit Court  
Fishkill, NY 12524  
(845) 896-9500

**STANDARD VIDEO SURVEILLANCE SYSTEM SALES CONTRACT**

Buyer's Name: Rome Fire Department (Central Fire Station)  
Address: 158 Black River Blvd. N., Rome, NY 13440  
Telephone: 315-339-7732

Date: October 7, 2016

COMMERCIAL INSTRUMENTS & ALARM SYSTEMS, INC., (hereinafter referred to as "CIA" or "Seller") agrees to sell and install, at Buyer's premises, and Buyer agrees to buy, an electronic video surveillance system, consisting of equipment as described on the attached proposal; pass code to CPU software remains property of CIA.

Purchase Price:	\$17,536.20
Taxes:	\$EXEMPT
Total:	\$17,536.20
50 percent deposit due with contract:	\$ 8,768.10
Balance due within 10 days of completion of installation:	\$ 8,768.10

**LIMITED WARRANTY**

In the event that any part of the surveillance system becomes defective, or in the event that any repairs are required, CIA agrees to make all repairs and replacement of parts without costs to the Buyer for a period of one (1) year from the date of installation. CIA reserves the option to either replace or repair the surveillance system, and reserves the right to substitute materials of equal quality at time of replacement, or to use reconditioned parts in fulfillment of this warranty. This warranty does not include batteries, reprogramming, damage by lightning, electrical surge, wire or foil breaks.

Except as set forth in this agreement, CIA makes no express warranties as to any matter whatsoever, including, without limitation, the condition of the equipment, its merchantability, or its fitness for any particular purpose. CIA does not represent nor warrant that the surveillance system may not be compromised or circumvented, or that the system will prevent any loss by burglary, hold-up, fire or otherwise; or that the system will in all cases provide the protection for which it is installed. CIA expressly disclaims any implied warranties, including implied warranties of merchantability or fitness for a particular purpose.

The warranty does not cover any damage to material or equipment caused by accident, misuse, attempted or unauthorized repair service, modification, or improper installation by anyone other than CIA. CIA shall not be liable for consequential damages. Buyer acknowledges that any affirmation of fact or promise made by CIA shall not be deemed to create an express warranty unless included in this contract in writing; that Buyer is not relying on CIA's skill or judgment in selecting or furnishing a system suitable for any particular purpose and that there are no warranties which extend beyond those on the face of this agreement, and that CIA has offered additional and more sophisticated equipment for an additional charge which Buyer has declined.

Buyer's exclusive remedy for CIA's breach of this contract or negligence to any degree under this contract is to require CIA to repair or replace, at CIA's option, any equipment or part of the alarm system which is non-operational.

Some states do not allow the exclusion or limitation of consequential or incidental damages, or a limitation on the duration of implied warranties, so the above limitations or exclusions may not apply to you. The warranty gives you specific legal rights and you may also have other rights which may vary from state to state.

If required by law, CIA will procure all building and/or electrical permits required by local law and will provide certificate of workman's compensation prior to starting work, if requested. We recommend that you check with your local municipality regarding laws or ordinances that govern alarm usage or end user alarm permits that may be required as CIA Security is not responsible for end-user permits.

**SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS OF THIS SALE WHICH ARE PART OF THIS CONTRACT.  
READ THEM BEFORE YOU SIGN THIS CONTRACT.**

**BUYER ACKNOWLEDGES RECEIVING A FULLY EXECUTED COPY OF THIS CONTRACT AT TIME OF EXECUTION.**

**COMMERCIAL INSTRUMENTS & ALARM  
SYSTEMS, INC.**

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

**PLEASE SIGN BELOW**

Buyer: Signature, Print Name Below  
\_\_\_\_\_

Email Address: \_\_\_\_\_

*By providing your email address, you give CIA Security the permission to send invoice alerts, system notification alerts as well as other administration notifications. In addition we will send confirmations and reminders of upcoming service appointments that you make. The safety and security of our clients is our primary concern so please be assured that we WILL NOT under any circumstances share/sell your email address.*

1. **DELAY IN INSTALLATION:** CIA shall not be liable for any damage or loss sustained by Buyer as a result of delay in installation of equipment, equipment failure, or for interruption of service due to electric failure, strikes, walk-outs, war, acts of God, or other causes, including CIA's negligence in the performance of this contract. The estimated date work is to be substantially completed is not a definite completion date and time is not of the essence.
2. **ALTERATION OF PREMISES FOR INSTALLATION:** CIA is authorized to make preparations such as drilling holes, driving nails, making attachments or doing any other thing necessary in CIA's sole discretion for the installation and service of the surveillance system, and CIA shall not be responsible for any condition created thereby as a result of such installation, service, or removal of the surveillance system, and Buyer represents that the owner of the premises, if other than Buyer, authorizes the installation of the surveillance system under the terms of this agreement.
3. **BUYER'S DUTY TO SUPPLY ELECTRIC AND TELEPHONE SERVICE:** Buyer agrees to furnish, at Buyer's expense, all 110 Volt AC power and electrical outlets and receptacles, internet access, high speed broadband cable or DSL and IP Address, telephone hook-ups, RJ31 Block or equivalent, as deemed necessary by Seller in its sole discretion and to notify Seller in writing via fax, e-mail or registered mail of any change in such service.
4. **LIEN LAW:** CIA or any subcontractor engaged by CIA to perform the work or furnish material who is not paid may have a claim against purchaser or the owner of the premises if other than the purchaser which may be enforced against the property in accordance with the applicable lien laws.
5. **APPLICATION OF PAYMENTS:** CIA is legally required to deposit all payments received prior to completion in accordance with New York Lien Law subdivision four of section seventy-one-a, and in lieu of such deposit CIA may post a bond or contract of indemnity with purchaser guaranteeing the return or proper application of such payments to the purposes of this contract.
6. **INDEMNITY:** Buyer agrees to and shall indemnify and hold harmless CIA, its employees, agents and subcontractors, from and against all claims, lawsuits, including those brought by third parties or Buyer, including reasonable attorneys' fees and losses asserted against and alleged to be caused by CIA's performance, negligent performance, or failure to perform any obligation. Parties agree that there are no third party beneficiaries of this contract.
7. **EXCULPATORY CLAUSE:** CIA and Buyer agree that the security equipment, once installed, becomes the personal property of the Buyer; that the equipment is not permanently attached to the realty and shall not be deemed fixtures. Buyer agrees that CIA is not an insurer and no insurance coverage is offered herein. The security equipment is designated to reduce certain risks of loss, though CIA does not guarantee that no loss will occur. CIA is not assuming liability, and, therefore shall not be liable to Buyer for any loss, personal injury or property damage sustained by Buyer as a result of burglary, theft, hold-up, fire, equipment failure, smoke, or any other cause, whatsoever, regardless of whether or not such loss or damage was caused by or contributed to by CIA's negligent performance or failure to perform any obligation. Buyer releases CIA from any claims for contribution, indemnity or subrogation.
8. **LIMITATION OF LIABILITY:** Buyer agrees that should there arise any liability on the part of CIA as a result of CIA's negligent performance to any degree of failure or perform any of CIA's obligations or equipment failure, that CIA's liability shall be limited the sum of \$1,000.00 or 5% of the sales price, whichever is greater. If Buyer wishes to increase CIA's maximum amount of CIA's limitation of liability, Buyer may, as a matter of right, at any time, by entering into a supplemental contract, obtain a higher limit by paying an annual payment consonant with CIA's increased liability. This shall not be construed as insurance coverage.
9. **WAIVER OF SUBROGATION RIGHTS:** Buyer does hereby for himself/herself/itself and any parties claiming under Buyer, release and discharge CIA from any and against all hazards covered by Buyer's insurance. Buyer on its behalf and any insurance carrier waives any right of subrogation Buyer's insurance carrier may otherwise have against CIA or CIA's subcontractors arising out of this agreement or the relation of the parties hereto.
10. **ASSIGNMENTS:** CIA shall have the right to assign this contract and shall be relieved of any obligations created herein upon such assignment. Buyer shall not be permitted to assign this agreement without written consent of CIA.
11. **LEGAL ACTION:** In the event CIA institutes legal action to recover any amounts owed by Buyer to CIA hereunder, the parties agree that the amount to be recovered, and any judgment to be entered, shall include an administration fee of 5% and interest at the rate of 1 1/2% per month from the date payment is due. Should CIA prevail in any litigation between the parties Buyer shall pay 100% of CIA's reasonable legal fees.
  - a) The parties waive trial by jury in any action between them. In any action commenced by CIA against Buyer, Buyer shall not be permitted to interpose any counterclaim.
  - b) Any action by Buyer against CIA must be commenced within one year of the accrual of the cause of action or shall be barred. All actions or proceedings against CIA must be based on the provisions of this agreement. Any other action that Buyer may have or bring against CIA in respect to other services rendered in connection with this agreement shall be deemed to have merged in and be restricted to the terms and conditions of this agreement.
  - c) Any action or dispute between the parties, including issues of arbitrability, shall, at the option of either party, be determined by arbitration administered by the National Arbitration Association under its CIA Arbitration Rules [www.natarb.com](http://www.natarb.com).
12. **CIA'S RIGHT TO SUBCONTRACT SPECIAL SERVICES:** Buyer agrees that CIA is authorized and permitted to subcontract any services to be provided by CIA to third parties who may be independent of CIA, and that CIA shall not be liable for any loss or damage sustained by Buyer by reason of fire, theft, burglary or any other cause whatsoever caused by the negligence of third parties and that Buyer appoints CIA to act as Buyer's agent with respect to such third parties, except that CIA shall not obligate Buyer to make any payments to such third parties. CIA shall be permitted to assign this contract and upon such assignment shall have no further obligation hereunder.
13. Buyer acknowledges that this agreement, and particularly those paragraphs relating to CIA's disclaimer of warranties, exemption from liability, even for its negligence, limitation of liability and indemnification, inure to the benefit of and are applicable to any assignee, subcontractors and communication centers of CIA.
14. **NON-SOLICITATION.** Buyer agrees that it will not solicit for employment for itself, or any other entity, or employ, in any capacity; any employee of CIA assigned by CIA to perform any service for or on behalf of Buyer for a period of two years after CIA has completed providing service to Buyer. In the event of Buyer's violation of this provision, in addition to injunctive relief, CIA shall recover from Buyer an amount equal to such employee's salary based upon the average three months preceding employee's termination of employment with CIA, times twelve, together with CIA's counsel and expert witness fees.
15. **FULL AGREEMENT/SEVERABILITY.** This agreement constitutes the full understanding of the parties and may not be amended or modified or canceled except in writing signed by both parties, except that in the event CIA issues a UL certificate to Buyer, CIA will comply with Underwriters Laboratory Inc. or any local law requirements regarding items of protection provided for in this agreement. Should any provision of this agreement be deemed void, the remaining parts shall not be affected. There are no verbal agreements or representations and Buyer has relied on none.

CONFIDENTIAL

RESOLUTION NO. 195

AUTHORIZING THE APPOINTMENT OF DENNIS GILLEN  
TO HOUSING INSPECTOR (GRADE 112 – STEP 4)

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

WHEREAS, it is the recommendation of Mark Domenico, Chief Code Enforcement Officer for the City of Rome, New York, that Dennis Gillen be appointed to Housing Inspector (Grade 112 – Step 4), effective October 14, 2016; now, therefore,

BE IT RESOLVED, by the Board of Estimate and Contract of the City of Rome, New York, that Dennis Gillen be appointed to Housing Inspector (Grade 112 – Step 4), effective October 14, 2016; and

BE IT FURTHER RESOLVED, the 2016 Budget shall be amended to reflect same.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Izzo \_\_\_\_\_ Viscelli \_\_\_\_\_ Feeney \_\_\_\_\_  
Schmidt \_\_\_\_\_ Nolan \_\_\_\_\_

ADOPTED: DEFEATED:

RESOLUTION NO. 196

AMENDING RESOLUTION NO. 87 ADOPTED APRIL 14, 2016  
REGARDING A PROFESSIONAL SERVICES AGREEMENT  
WITH BOND SCHOENECK AND KING (\$2,499.25)

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

WHEREAS, the Board of Estimate and Contract of the City of Rome, pursuant to Resolution No. 87 adopted April 14, 2016, authorized the Mayor to enter into a professional services agreement with Bond, Schoeneck, and King, for the legal representation of the City of Rome, New York regarding an Article 78 proceeding, said legal services to be billed at an hourly rate of \$250.00 for a maximum amount not to exceed \$7,500.00; and

WHEREAS, Gerard F. Feeney, Corporation Counsel for the City of Rome, New York, has requested that the maximum amount not to exceed be amended to \$9,999.25, so as to authorize the City of Rome to remit the remaining payment of \$8,873.00 for the above referenced services; and

BE IT RESOLVED, that Resolution No. 87, adopted April 14, 2016, be and is hereby amended to reflect a maximum amount not to exceed \$9,999.25; and

BE IT FURTHER RESOLVED, by the City of Rome Board of Estimate and Contract, that the remainder of Board of Estimate and Contract Resolution No. 87 adopted April 14, 2016, shall remain as originally set forth.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Izzo \_\_\_\_\_ Viscelli \_\_\_\_\_ Feeney \_\_\_\_\_  
Schmidt \_\_\_\_\_ Nolan \_\_\_\_\_

ADOPTED: DEFEATED:

RESOLUTION NO. 197

RESOLUTION CONCERNING THE ESTABLISHMENT OF THE GREATER MOHAWK VALLEY LAND BANK CORPORATION AND APPOINTING REPRESENTATIVE TO SERVE ON GREATER MOHAWK VALLEY LAND BANK BOARD

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

WHEREAS, New York State has recognized the need to provide new tools and innovative solutions to address deteriorated, abandoned and tax-delinquent properties and the blight they inflict upon communities; and

WHEREAS, New York State acknowledges the risks to public health and safety caused by seriously derelict properties; and

WHEREAS, land banks allow and provide a mechanism for the re-development, repair, improvement, or in appropriate situations, deconstruction of blighted properties; and

WHEREAS, land banks have now been firmly established nationally, with a success record in helping to ameliorate the above negative impacts; and

WHEREAS, in recognition of same and in order to revitalize and strengthen local communities and economies New York State has adopted a Land Bank Act (“Not-for-Profit” Corporation Law, Article 16); and

WHEREAS, a number of communities in the Greater Mohawk Valley with the direction and encouragement of the Mohawk Valley Economic Development District (“MVEDD”), desire to create a regional land bank in order to efficiently and effectively address blight across the Greater Mohawk Valley; and

WHEREAS, in accordance with the provisions of the Land Bank Act, it is necessary to adopt a resolution establishing the Greater Mohawk Valley Land Bank Corporation (“GMVLB”) on behalf of the City of Rome and the other signatories, and addressing certain other requirements relating to the structure and function of the GMVLB; now, therefore

BE IT RESOLVED, by the Board of Estimate and Contract of the City of Rome, that the City of Rome, New York hereby establishes and authorizes the creation of a regional land bank, as follows:

1. Name of the land bank: Greater Mohawk Valley Land Bank Corporation;
2. Number of initial members of the board of directors: 9

3. The initial individuals to serve on the GMVLB board and their initial terms of office are:

(a) Appointed by the Chairman of the Legislature, confirmed by the Herkimer County Legislature:

Raymond Johnson (County Legislator), initial term of 2-years;

Kurt Ackerman (County Legislator), initial term of 1-year;

(b) Appointed by the County Executive of Montgomery County:

Karl Gustafson (Office of the Executive), initial term of 2-years;

(c) Appointed by Chairman of the Board of Representatives of Otsego County, confirmed by Resolution of the Board:

Margaret M. Kennedy (County Representative), initial term of 2-years;

Craig Gelbsman (County Representative), initial term of 1-year;

(d) Appointed by Chairman of the Board of Supervisors, confirmed by Resolution of the Board of Schoharie County:

Steven Wilson (County Administrator), initial term of 2-years;

(e) Appointed by the Mayor of the City of Rome, confirmed by the Common Council of the City of Rome:

Mark Domenico (Chief Code Enforcement Officer), initial term of 1-year;

(f) Appointed by the Mayor of the City of Utica:

Brian Thomas (Commissioner, Urban & Economic Development); initial term of 2-years;

(g) Appointed by the Common Council of the City of Utica:

Joseph A. Marino (Chair, Economic Development Committee), initial term of 1-year;

4. Board members must be a resident of the county or city from which they are appointed. Each of the joining counties and the joining cities will be entitled to have the number of members on the board of directors as listed above. The regular terms of office of members of the board shall be 2 years, in addition to any partial term for which a member is appointed to fill a vacancy.

5. The proposed articles of incorporation of the GMVLB, which are attached hereto and made part hereof, are approved for inclusion in the application for the GMVLB which is to be sent to Empire State Development.

6. The City of Rome (together with the other joining counties and cities) will enter into and that Mayor Jacqueline M. Izzo is authorized to execute an Intermunicipal Agreement for the creation of GMVLB, and is authorized to execute such other documents as may be necessary to establish the GMVLB, subject to the approval of the Corporation Counsel.

Seconded by \_\_\_\_\_.

AYES & NAYS: Mayor Izzo \_\_\_\_\_ Viscelli \_\_\_\_\_ Feeney \_\_\_\_\_  
Schmidt \_\_\_\_\_ Nolan \_\_\_\_\_

ADOPTED:

DEFEATED:

**INTERMUNICIPAL AGREEMENT**

BETWEEN

**THE COUNTIES OF HERKIMER, MONTGOMERY, OTSEGO and SCHOHARIE, all of  
NY**

**AND**

**THE CITIES OF ROME and UTICA, all of NY,**

**FOR THE CREATION OF THE**

**GREATER MOHAWK VALLEY LAND BANK**

(a New York Land Bank)

## **PREAMBLE**

This intermunicipal agreement made and entered into this \_\_\_ day of \_\_\_\_\_, 2016 (“Agreement”) under the New York Land Bank Act, Article 16 of the New York Not-for-Profit Corporation Law, between **THE COUNTIES OF HERKIMER, MONTGOMERY, OTSEGO and SCHOHARIE, all of NY** (hereinafter the “Counties”) and the **CITIES OF ROME and UTICA, all of NY** (hereinafter the “Cities”) (hereinafter collectively referred to as the “Parties”) for the purpose of establishing and creating the **GREATER MOHAWK VALLEY LAND BANK (“GMVLB”)**, a type C not-for-profit corporation to administer and implement the purposes and objectives of this Agreement.

## **RECITALS**

WHEREAS, in enacting the New York Land Bank Act as Article 16 of the New York Not-for-Profit Corporation Law (hereinafter the “Land Bank Act”), the Legislature found that there exists in the State of New York a continuing need to strengthen and revitalize the economy of the State of New York and communities in this state and that it is in the best interests of the State of New York and communities in this state to confront the problems caused by vacant, abandoned and tax delinquent properties through the creation of land banks in a coordinated manner to foster the development of that property and to promote economic growth;

WHEREAS, § 1603 of the Land Bank Act permits any or any two or more foreclosing governmental units to enter into an intergovernmental cooperation agreement to establish a land bank.;

WHEREAS, the Parties herein agree that the establishment of a land bank would be beneficial to the Parties and their residents; and

WHEREAS, the Parties desire to create the GMVLB as a type C not-for-profit corporation to operate as a land bank in accordance with the Land Bank Act and to exercise the powers, duties, functions, and responsibilities of a land bank under the Land Bank Act.

Accordingly, the Parties agree to the following:

## **ARTICLE I** **DEFINITIONS**

As used in this Agreement the following terms shall have the meanings provided in this Article.

**Section 1.01. “Board of Directors” or “Board”** means the Board of Directors of the Land Bank, and “Corporation Director” means a person who is appointed to such Board.

**Section 1.02. “Agreement”** means this intermunicipal agreement between the Parties.

**Section 1.03. “Effective Date”** means the date upon which all of the following are satisfied:

- (a) the Agreement is approved by resolution of each of the before-named County Boards and Legislatures;
- (b) the Agreement is approved by resolution, ordinance, or local law of the Common Council of each of the before-named Cities; and
- (c) the creation of the GMVLB is approved by the Empire State Development Corporation in accordance with Section 1603(g) of the Land Bank Act.

**Section 1.04. “Fiscal Year”** means the fiscal year of the Land Bank, which shall begin on January 1st of each year and end on the following December 31st.

**Section 1.05. “Land Bank Act”** means Article 16 of the New York Not-for-Profit Corporation Law and as it may be hereafter amended or replaced, subject to the provisions of Section 10.11 of this Agreement.

**Section 1.06. “Land Bank”** means the type C not-for-profit corporation established pursuant to and in accordance with the provisions of this Agreement and known as the Greater Mohawk Valley Land Bank, or GMVLB.

**Section 1.07. “Party” or “Parties”** means either individually or collectively, as applicable, the above-named cities and counties.

**Section 1.08. “Person”** means an individual, authority, limited liability company, partnership, firm, corporation, organization, association, joint venture, trust, governmental entity, or other legal entity.

**Section 1.09. “Quorum”** means a majority of the Corporation Directors, not including vacancies.

**Section 1.10. “Real Property”** means all lands and the buildings thereon, all things permanently attached to land or to the buildings thereon, and any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

**Section 1.11. “Tax Delinquent Property”** means real property encumbered by an outstanding tax lien for a delinquent tax as defined in Section 1102 of the New York Real Property Tax Law, or such other general, special or local laws as may be applicable to the property tax enforcement procedures of the Parties.

**Section 1.12. “State”** means the state of New York.

**ARTICLE II**  
**PURPOSE**

**Section 2.01. Purpose.** The purpose of this Agreement is to create the GMVLB to help address, in a coordinated manner, the Parties' problems and concerns regarding vacant and abandoned properties; to further foster the development of such property; and to promote economic growth through the return of vacant, abandoned, tax-foreclosed, and tax-delinquent properties to productive use.

**Section 2.02. Powers and Functions.** The GMVLB shall have all of those powers, duties, functions, and responsibilities authorized pursuant to the Land Bank Act.

**Section 2.03. Intent.** The intent of this agreement is to provide a fair and equitable distribution of funds among the members of the GMVLB to accomplish the purposes of the Land Bank.

**ARTICLE III**  
**CREATION OF LAND BANK**

**Section 3.01. Creation and Legal Status of Land Bank.** The Land Bank is established pursuant to the Land Bank Act as a type C not-for-profit corporation to be known as the "Greater Mohawk Valley Land Bank" or "GMVLB."

**Section 3.02. By-Laws, and Policies and Procedures.** The Board shall adopt by-laws consistent with the provisions of this Agreement and the Land Bank Act within forty-five (45) days of the Effective Date. The Board shall adopt policies and procedures consistent with the provisions of this Agreement and the Land Bank Act within ninety (90) days of the Effective Date.

**Section 3.03. Principal Office.** The principal office of the Land Bank shall be determined by the Board but shall always be in a location within the geographical boundaries of the County of Herkimer.

**Section 3.04. Title to Land Bank Assets.** All Real Property held in fee by the Land Bank shall be held in its own name.

**Section 3.05. Tax-Exempt Status.** The Parties intend the activities of the Land Bank to be governmental functions carried out by an instrumentality or political subdivision of the State as described in section 115 of Title 26 of the United States Internal Revenue Code, or any corresponding provisions of any future tax code. The Real Property of the Land Bank and all of the Land Bank's income and operations shall be exempt from all taxation by the State of New York or any of its political subdivisions.

**Section 3.06. Extinguishment of Taxes and Assessments.** Upon the request of the Land Bank and for the purposes of fostering the goals and objectives of the Land Bank, any Party, at its option and in its discretion, may extinguish any Real Property Taxes or special assessments levied by that Party against Real Property owned by the Land Bank.

**Section 3.07. Compliance with Law.** The Land Bank shall comply with all federal, State, and local laws, ordinances, rules, regulations, and orders applicable to this Agreement.

**Section 3.08. Relationship of Parties.** The Parties agree that each of them shall not be responsible, in whole or in part, for the acts of the employees, agents, and servants of any of the other of them, whether acting separately or in conjunction with the implementation of this Agreement. The Parties shall only be bound and obligated under this Agreement as expressly agreed to by each Party. The Land Bank shall not obligate any of the cities or counties, nor shall any obligation of the Land Bank constitute an obligation of any city or county.

**Section 3.09. No Third-Party Beneficiaries.** Except as otherwise specifically provided, this Agreement does not create and is not intended to create in any non-Party, by implication or otherwise, any direct or indirect benefit, obligation, duty, promise, right to be indemnified (such as contractually, legally, equitably, or by implication), right to be subrogated to any Party's rights under this Agreement, and/or any other right or benefit.

#### **ARTICLE IV** **CORPORATION MEMBERS**

**Section 4.01. Corporation Members.** Foreclosing Governmental Units (FGUs) including the Counties of Herkimer, Montgomery, Otsego, Schoharie and the Cities of Rome and Utica, all of the State of New York, will comprise the GMVLB, and will be Corporation Members.

**Section 4.02. Number.** There will be six FGUs participating in the GMVLB.

**Section 4.03. Size.** Without the affirmative vote of all Corporation Members, there can be no increase in the number of Corporation Members of the GMVLB.

#### **ARTICLE V** **BOARD, EXECUTIVE DIRECTOR AND STAFF**

**Section 5.01. Board Composition.** The Land Bank shall be governed by a Board of Directors consisting of nine persons, each of whom shall be a Corporation Director. Each Corporation Director shall serve without compensation. Each Corporation Director shall continue to serve until the appointment and qualification of his or her successor. Vacancies in the Board occurring otherwise than by expiration of term shall be filled for the unexpired term.

The Corporation Directors shall be appointed as follows:

- (a) One (1) Corporation Director shall be appointed by the County Executive, Chairman or Supervisor of each County and confirmed by the respective County Legislature or Board;
- (b) One (1) Corporation Director shall be appointed by the Mayor of the City of Rome and confirmed by the Common Council of the City of Rome;

- (c) One (1) Corporation Director shall be appointed by the Mayor of the City of Utica.
- (d) One (1) Corporation Director who is a resident of Herkimer County shall be appointed by the Chairman of the Legislature and confirmed by the Herkimer County Legislature;
- (e) One (1) Corporation Director who is a resident of Otsego County shall be appointed by the Chairman of the Board of Representatives and confirmed by Resolution of the Otsego County Board of Representatives;
- (f) One (1) Corporation Director who is a Member of the Common Council of the City of Utica shall be appointed by the Common Council of the City of Utica;

**Section 5.02. Initial Corporation Directors.** The first term of the first Corporation Directors shall commence on the date of the first Board meeting. The initial Corporation Directors of the Board of the Land Bank shall be:

- (a) Appointed by the Chairman of the Legislature, confirmed by the Herkimer County Legislature:  
Raymond Johnson (County Legislator); initial term of 2-years  
Kurt Ackerman (County Legislator); initial term of 1-year
- (b) Appointed by the County Executive of Montgomery County:  
Karl Gustafson (Office of the Executive); initial term of 2-years
- (c) Appointed by the Chairman of the Board of Representatives of Otsego County, confirmed by Resolution of the Board:  
Margaret M. Kennedy (County Representative); initial term of 2-years  
Craig Gelbsman (County Representative); initial term of 1-year
- (d) Appointed by Chairman of the Board of Supervisors, confirmed by Resolution of the Board of Schoharie County:  
Steven Wilson (County Administrator); initial term of 2-years
- (e) Appointed by the Mayor of the City of Rome, confirmed by the Common Council of the City of Rome:  
Mark Domenico (Chief Code Enforcement Officer); initial term of 1-year
- (f) Appointed by the Mayor of the City of Utica:  
Brian Thomas (Commissioner, Urban & Economic Development); initial term of 2-years
- (g) Appointed by the Common Council of the City of Utica:  
Joseph A. Marino (Chair, Economic Development Committee),  
initial term of 1-year

**Section 5.03 Term of Office.** Except for the terms of the initial Corporation Directors as outlined in Section 5.02, the Corporation Directors appointed to succeed the initial Corporation Directors shall be appointed for a term of 2 years. In the event State law is amended to provide for different terms and/or composition of the Board, then the Board as it exists at the time of such amendment shall be authorized to take any action required such that the Board complies with any requirements of State law.

**Section 5.04. Qualifications.** All Corporation Directors of the Land Bank shall be residents of the county or city that nominated them.

**Section 5.05. Removal.** Corporation Directors serve at the pleasure of the appointing Party.

**Section 5.06. Vacancies.** A vacancy among the Corporation Directors appointed under section 5.01, whether caused by the death, resignation, or removal of a Corporation Director, shall be filled in the same manner as the original appointment for the balance of the unexpired term. Such vacancy shall be filled as soon as practicable.

**Section 5.07. Meetings.** The Board shall conduct its first meeting no later than thirty (30) calendar days after the Effective Date. The Board shall meet at least annually and shall hold such other meetings at the place, date, and time as the Board shall determine.

**Section 5.08. Records of Meetings.** The Board shall maintain minutes and a written record of each meeting. All meetings of the Board shall comply with the provisions of Section 1612(a) of the Land Bank Act and be subject to the New York Open Meetings Law and the New York Freedom of Information Law.

**Section 5.09. Quorum and Voting.** Presence for both quorum and voting at a Board meeting may include electronic communication subject to the New York Open Meetings Law. All actions of the Board shall be approved by the affirmative vote of a majority of the Corporation Directors present and voting; provided, however, no action of the Board shall be authorized on the following matters unless approved by a majority of the total Corporation Directorship:

- (a) Adoption of by-laws and other rules and regulations for conduct of the Land Bank's business;
- (b) Hiring or firing of any employee or contractor of the Land Bank. This function may, by a majority vote of the total Corporation Directorship, be delegated to a specific officer or committee of the Land Bank, under such terms and condition, and to the extent, that the Board may specify;
- (c) The incurring of debt;
- (d) Adoption or amendment of the annual budget; and
- (e) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property.

**Section 5.10. Board Responsibilities.** The Board shall have all powers necessary to carry out and effectuate the purposes and provisions of this Agreement and the Land Bank Act, including all of those powers set forth in Section 1607 of the Land Bank Act.

**Section 5.11. Fiduciary Duty.** The Corporation Directors are under a fiduciary duty to conduct the activities and affairs of the Land Bank in the best interests of the Land Bank, including the safekeeping and use of all Land Bank monies and assets. The Corporation Directors shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

**Section 5.12. Compensation.** The Corporation Directors shall serve without compensation. The Board may reimburse any Corporation Director for expenses actually and reasonably incurred in the performance of duties on behalf of the Land Bank.

**Section 5.13. Executive Director.** The Board may select and retain an executive director. An executive director selected and retained by the Board shall administer the Land Bank in accordance with the operating budget adopted by the Board, general policy guidelines established by the Board, other applicable governmental procedures and policies, and this Agreement. The executive director shall be responsible for the day-to-day operations of the Land Bank, the control, management, and oversight of the Land Bank's functions, and supervision of all Land Bank employees. The executive director shall serve at the pleasure of the Board. The Board may delegate to the executive director any powers or duties it considers proper, subject to the constraints of Land Bank Act, and under such terms and conditions as the Board may specify.

**Section 5.14. Employees.** The Land Bank may employ or otherwise contract for the services of any staff deemed necessary to carry out the duties and responsibilities of the Land Bank. Such staff may be employed as employees of the Land Bank, or the services of such staff may be retained pursuant to contracts with any Party or other public or private entities.

**Section 5.15. Conflicts of Interest.** No Corporation Director, nor employee of the Land Bank, shall acquire any interest, direct or indirect, in Real Property of the Land Bank. No Corporation Director, or employee of the Land Bank, shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by the Land Bank. The Board shall establish policies and procedures requiring the disclosure of relationships that may give rise to a conflict of interest and may adopt ethical guidelines for Corporation Directors and employees of the Land Bank. The Board shall require that any Corporation Director with a direct or indirect interest in any matter before the Board disclose such interest to the Board before the Board takes any action on the matter.

## **ARTICLE VI**

### **POWERS OF LAND BANK**

**Section 6.01. General Powers Under Land Bank Act.** The Land Bank shall have all those powers necessary to carry out and effectuate the purposes and provisions of the Land Bank Act including, but not limited to, all those powers specified under Section 1607 of the Land Bank Act

Act, and all those other powers granted to Land Banks pursuant to the Land Bank Act or other statutory authority.

**Section 6.02 Purchase of Tax Liens.** The Land Bank may acquire liens relative to Tax Delinquent Property in accordance with Section 1616 of the Land Bank Act.

**Section 6.03. Execution of Legal Documents Relating to Real Property.** The terms of any contract or agreement concerning the sale, lease license, easement, encumbrance, or other alienation of any interest in Real Property, or improvements thereto, or personal property of the Land Bank, shall be approved by the Board. All contracts of the Land Bank shall be executed in the name of the Land Bank.

**Section 6.04. Civil Action to Protect Land Bank Real Property.** The Land Bank may institute a civil action to prevent, restrain, or enjoin the waste of or unlawful removal of any Real Property held by the Land Bank. The Land Bank may also institute any civil action to protect, clear title to, determine the rights of parties to, remove liens from, or that is otherwise related to the Real Property of the Land Bank.

**Section 6.05. Transfer of Interests in Real Property by Land Bank.** On terms and conditions, in a manner, and for an amount of consideration the Land Bank considers proper, fair, and reasonable, including for no monetary consideration, the Land Bank may convey, sell, transfer, exchange, lease as lessor, or otherwise dispose of Real Property or rights or interests in Real Property in which the Land Bank holds a legal interest to any public or private Person subject to the Public Authorities Law, and any other statutory requirements.

**Section 6.06. Structure of Conveyances.** Transactions shall be structured in a manner that permits the Land Bank to enforce contractual agreements, real covenants, and the provisions of any subordinate financing held by the Land Bank pertaining to development and use of the Real Property.

**Section 6.07. Disposition of Proceeds.** Any proceeds from the sale or transfer of Real Property by the Land Bank shall be retained, expended, or transferred by the Land Bank as determined by the Board in the best interests of the Land Bank and in accordance with the Land Bank Act.

## ARTICLE VII RESTRICTIONS ON POWERS

**Section 7.01. Eminent Domain Prohibited.** The Land Bank shall neither possess nor exercise the power of eminent domain.

**Section 7.04. Limitation on Political Activities.** The Land Bank shall not spend any public funds on political activities. Subject to the foregoing, this section is not intended to prohibit the Land Bank from engaging in activities authorized by applicable law.

**Section 7.05. No Waiver of Governmental Immunity.** The Parties agree that no provision of the Agreement is intended, nor shall it be construed, as a waiver by any Party of any governmental immunity provided under any applicable law.

**Section 7.06. Non-Discrimination.** The Land Bank shall comply with all applicable laws prohibiting discrimination.

**Section 7.07. Building and Housing Codes.** The Land Bank shall maintain all Real Property held by the Land Bank in accordance with applicable State laws and local codes.

## **ARTICLE VIII**

### **BOOKS, RECORDS, AND FINANCES**

**Section 8.01. Land Bank Records.** The Land Bank shall keep and maintain at the principal office of the Land Bank all documents and records of the Land Bank. All records of the Land Bank, subject to any claimed privilege, shall be made available to any Party. The records and documents shall be maintained until the termination of this Agreement and shall be delivered to any successor entity.

**Section 8.02. Financial Statements and Reports.** The Land Bank shall cause to be prepared, at the Land Bank's expense, audited financial statements (balance sheet, statement of revenue and expense, statement of cash flows, and changes in fund balance) on an annual basis. Such financial statements shall be prepared in accordance with generally accepted accounting principles and accompanied by a written opinion of an independent certified public accounting firm. The Land Bank shall be subject to audit by the office of the state comptroller in accordance with Section 1603(h) of the Land Bank Act. An Annual Financial Report will be provided to each of the FGUs, at the option of the FGU.

**Section 8.03. Annual Budget.** The executive director, or other individual designated by the Board, shall prepare annually a budget for the Land Bank. The Board shall review and approve a budget for the Land Bank immediately preceding each Fiscal Year.

**Section 8.04. Deposits and Investments.** The Land Bank shall deposit and invest funds of the Land Bank, not otherwise employed in carrying out the purposes of the Land Bank, in accordance with an investment policy established by the Board consistent with laws and regulations regarding investment of Land Bank funds.

**Section 8.05. Disbursements.** Disbursements of funds shall be in accordance with guidelines established by the Board and in compliance with all State statutes and regulations.

**Section 8.06. Performance Objectives.** Each Fiscal Year, the executive director, or other individual designated by the Board, shall prepare, for review and approval by the Board, objectives for the Land Bank's performance. An Annual Objective Report will be provided and presentation made to each of the FGUs, at the option of the FGU.

**Section 8.07. Real Property Inventory Records.** The Land Bank shall inventory all Real Property owned, held, or disposed of by the Land Bank. The inventory shall be maintained as a public record and shall be available in accordance with Sections 1608(h) and (i), and Sections 1609(b) of the Land Bank Act.

## **ARTICLE IX**

## FUNDING AND EXPENDITURES

**Section 9.01. Budget Contributions.** While under no obligation, the Parties may contribute to the annual Land Bank budget in such manner as approved by the Party or Parties

**Section 9.02. Issuance of Bonds.** The Land Bank may issue, sell, and deliver bonds in accordance with the provisions of Section 1611 of the Land Bank Act.

**Section 9.03. Tax Allocation.** Upon the adoption of a resolution or ordinance by any of the Parties, such Party may provide for Fifty (50) percent of that Party's real property taxes collected on any parcel or parcels of real property identified in such resolution or ordinance (or both) to be remitted to the Land Bank for a period of five years in accordance with the provisions of section 1610(c) of the Land Bank Act.

**Section 9.04. Management of Funds.** The Land Bank shall designate a fiscal agent of the Land Bank to manage sales proceeds, monetary contributions made by the Parties, and other Land Bank funds. Standard accounting procedures shall be used in the management of Land Bank accounts.

**Section 9.05. Authorized Expenditures.** The Land Bank shall in its sole discretion and within its budget expend such funds as necessary to carry out the powers, duties, functions, and responsibilities of a land bank under the Land Bank Act consistent with this Agreement, and State law.

## ARTICLE X DURATION OF AGREEMENT

**Section 10.01. Duration.** This Agreement shall commence on the Effective Date and shall remain in full force and effect for a period of three years.

**Section 10.02. Withdrawal by Party.** Any Party may withdraw from this Agreement upon six (6) months' notice to the other Parties, and to the Land Bank, but such withdrawal shall in no case be effective until the end of the then-current 3-year term. The withdrawing Party shall have no rights to funds or other assets of the Land Bank. If at the time of withdrawal the requirements of the Land Bank Act provide that some Real Property of the Land Bank be liquidated, any sums received from the sale of such properties shall remain the funds of the Land Bank. Upon the withdrawal of any Party to this Agreement, the provisions of this Agreement shall remain in force for any remaining Parties to the Agreement.

**Section. 10.03. Dissolution.** The Land Bank may only be dissolved pursuant to the requirements of Section 1613 of the Land Bank Act.

## ARTICLE XI MISCELLANEOUS

**Section 11.01. Notices.** Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party via certified mail, return receipt requested, and by regular US mail. All correspondence shall be considered delivered to a Party as of the date that such notice is deposited with sufficient postage with the United States Postal Service. All such written notices, including any notice of withdrawal under Article IX, shall be sent to the Parties at the addresses below, or any subsequent address provided by such Party:

To: Herkimer County

Herkimer County  
Office of the Chairman of the Legislature  
Attn: Chairman of the Legislature  
109 Mary Street, Suite 1111  
Herkimer, NY 13350

With carbon copy to:

Herkimer County  
Attorney's Office  
Attn: County Attorney  
109 Mary Street, Suite 1320  
Herkimer, NY 13350

And to:

Herkimer County  
County Legislature  
Attn: Clerk of the County Legislature  
109 Mary Street, Suite 1310  
Herkimer, NY 13350

To: Montgomery County

Montgomery County  
Office of the County Executive  
Attn: County Executive  
20 Park Street  
PO Box 1500  
Fonda, New York 12068

With carbon copy to:

Montgomery County  
Department of Law

Attn: County Attorney  
20 Park Street  
PO Box 1500  
Fonda, New York 12068

And to:

Montgomery County  
County Legislature  
Attn: Clerk of the County Legislature  
20 Park Street  
PO Box 1500  
Fonda, New York 12068

To: Otsego County

Otsego County  
Office of the Chairman  
Attn: Chairman of the Board  
197 Main Street  
Cooperstown, NY 13326

With carbon copy to:

Otsego County  
Department of Law  
Attn: County Attorney  
197 Main Street  
Cooperstown, NY 13326

And to:

Otsego County  
Board of Representatives  
Attn: Clerk of the Board  
197 Main Street  
Cooperstown, NY 13326

To: Schoharie County

Schoharie County  
Office of the Chairman

Attn: Chairman of the Board  
County Office Building, 1st floor  
284 Main Street  
PO Box 429  
Schoharie, NY 12157

With carbon copy to:

Schoharie County  
Department of Law  
Attn: County Attorney  
County Office Building  
284 Main Street  
PO Box 429  
Schoharie, NY 12157

And to:

Schoharie County  
Board of Supervisors  
Attn: Clerk of the Board  
County Office Building  
284 Main Street  
PO Box 429  
Schoharie, NY 12157

To: The City of Rome

City of Rome  
Office of the Mayor  
Attn: Mayor  
198 North Washington Street  
Rome, NY 13440

With Carbon Copy to:

City of Rome  
Department of Law  
Attn: Corporation Counsel  
198 North Washington Street  
Rome, NY 13440

And to:

City of Rome  
Attn: City Clerk

198 North Washington Street  
Rome, NY 13440

To: The City of Utica

City of Utica  
Office of the Mayor  
Attn: Mayor  
1 Kennedy Plaza  
Utica, New York 13502  
With Carbon Copy to:

City of Utica  
Department of Law  
Attn: Corporation Counsel  
1 Kennedy Plaza  
Utica, New York 13502

And to:

City of Utica  
Attn: City Clerk  
1 Kennedy Plaza  
Utica, New York 13502

**Section 11.02. Entire Agreement.** This Agreement sets forth the entire Agreement between the Parties and supersedes any and all prior agreements or understandings between them in any way related to the subject matter of this Agreement. It is further understood and agreed that the terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other contracts, understandings, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

**Section 11.03. Interpretation of Agreement.** The Parties intend that this Agreement shall be construed liberally to effectuate the intent and purposes of this Agreement and the legislative intent and purposes of the Land Bank Act as complete and independent authorization for the performance of each and every act and thing authorized by this Agreement and the Land Bank Act. All powers granted to the Land Bank under this Agreement and the Land Bank Act shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

**Section 11.04. Severability of Provisions.** If any provision of this Agreement, or its application to any Person, Party, or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other Persons, Parties, or circumstances is not affected but will be enforced to the extent permitted by law.

**Section 11.05. Governing Law.** This Agreement is made and entered into in the State of New York and shall in all respects be interpreted, enforced, and governed under the laws of the State of New York without regard to the doctrines of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its plain and fair meaning, and not construed strictly for or against any Party.

**Section 11.06. Captions and Headings.** The captions, headings, and titles in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning or to be interpreted as part of this Agreement.

**Section 11.07. Terminology.** All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

**Section 11.08. Cross-References.** References in this Agreement to any article include all sections, subsections, and paragraphs in the article, unless specifically noted otherwise. References in this Agreement to any section include all subsections and paragraphs in the section.

**Section 11.09. Jurisdiction and Venue.** In the event of any disputes between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement, the matter under dispute, unless resolved between the Parties, shall be submitted to the courts of Herkimer County.

**Section 11.10. Amendments to Agreement.** This Agreement may be amended or an alternative form of this Agreement adopted only upon written amendment approved by all Parties.

**Section 11.11. Amendments to Land Bank Act.** The Land Bank shall have any powers authorized pursuant to any amendments, replacements, or substitutions to the Land Bank Act, unless the Agreement is amended by the Parties to provide otherwise.

**Section 11.12. Certificate of Incorporation.** The Certificate of Incorporation of the GREATER MOHAWK VALLEY LAND BANK is attached to this Agreement as Exhibit "A" and incorporated herein by reference.

**Section 11.13. Effective Date.** This Agreement shall become effective as of the Effective Date as that term is defined in Section 1.03 of this Agreement.

*[The remainder of this page is intentionally left blank, with the signature pages immediately following on the next page.]*

**ARTICLES OF INCORPORATION  
O F T H E  
GREATER MOHAWK VALLEY LAND BANK CORPORATION**

A Not-For-Profit Land Bank Corporation  
under Article 16 of the Not-For-Profit  
Corporation Law of the State of New York

**THE UNDERSIGNED**, being over the age of eighteen years, for the purpose of forming a not-for-profit land bank corporation pursuant to Article 16 of the Not-For-Profit Corporation Law of the State of New York, hereby certifies as follows:

FIRST: The name of the corporation shall be Greater Mohawk Valley Land Bank Corporation (hereinafter referred to as the "Corporation").

SECOND: The Corporation will be a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York and, as provided in Section 1603(f) of the Not-For-Profit Corporation Law, will be a Type C Corporation as defined in Section 201 of the Not-For-Profit Corporation Law. The Corporation shall be a public instrumentality of and supporting organization for, but separate and apart from the Members.

THIRD: The purposes for which the Corporation is to be formed and operated are exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to combat community deterioration by facilitating the return of vacant, abandoned, and tax-delinquent properties to productive use in order to eliminate the harms and liabilities caused by such properties; to lessen the burden of government; and to act in the public interest. In furtherance of said purposes, the Corporation's powers shall include all powers and duties granted land bank corporations as set forth in Article 16 of the Not-For-Profit Corporation Law of the State of New York, as it may be amended from time-to-time, which powers are incorporated herein by reference as if fully stated herein, and shall also include:

(a) any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, officers or any private person.

(b) In general, to perform any and all acts and things, and to exercise any and all powers which may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the foregoing purposes of the Corporation.

FOURTH: The Corporation's public objective and mission, which the Corporation's purpose will achieve, includes the lessening of the burdens of government by undertaking, promoting, and facilitating the return of vacant, abandoned, and tax-delinquent properties to productive use in order to eliminate the harms and liabilities caused by such properties and to combat community deterioration in the Greater Mohawk Valley, New York, that will include real estate development and management, deconstruction and salvaging of building materials, real estate project finance, and other community-based economic and human services development activities permissible under the Not-For-Profit Corporation Law.

FIFTH: The operations of the Corporation will be principally conducted within the territory of the Corporation Members, each of which is a Foreclosing Governmental Unit (hereinafter "FGU").

SIXTH: (a) All income and earnings of the Corporation shall be used exclusively for its corporate purposes with the intent that all income and earnings will be expended or deposited in appropriate reserves for corporate purposes;

(b) The property of the Corporation is irrevocably dedicated to charitable purposes.

SEVENTH: (a) The Corporation shall not attempt to influence legislation by propaganda or otherwise, nor participate in or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

(b) The Corporation shall not engage in any activities not permitted to be carried on by an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

EIGHTH: In the event of the dissolution of the Corporation or the winding up of its affairs, the Board of Directors shall, after paying or making provision for the payment of all debts and liabilities of the Corporation of whatsoever kind or nature, distribute all of the remaining assets and property of the Corporation to the FGUs as set forth in Section 1613 of the Not-for-Profit Corporation Law.

NINTH: The office of the Corporation shall be located in the County of Herkimer, New York.

TENTH: Members of the Corporation shall be referred to herein, and in the Intermunicipal Agreement, as Corporation Members. The types or classes of Membership in the Corporation and the number of Corporation Members shall be described in the Intermunicipal Agreement, and the initial Corporation Members shall be identified in the Intermunicipal Agreement.

ELEVENTH: The Corporation shall be initially managed by nine directors, hereinafter referred to as Corporation Directors, and collectively as the Board of Directors, and who shall be appointed as provided in the Intermunicipal Agreement, as may be amended from time to time. Each Corporation Director must be a resident of the county or city FGU which is appointing him/her. Any subsequent increase or decrease in the size of the Board of Directors will require the unanimous approval of the Corporation Directors, and shall be in accordance with Article 16 of the Not-For-Profit Corporation Law of the State of New York.

TWELFTH: The names and addresses of the initial Corporation Directors will be as follows:

- (a) Appointed by the Chairman of the Legislature, confirmed by the Herkimer County Legislature:  
Ray Johnson (County Legislator), and  
Kurt Ackerman (County Legislator);  
109 Mary Street, Suite 1310, Herkimer, NY 13350
- (b) Appointed by the County Executive of Montgomery County:  
Karl Gustafson (Office of the Executive);  
20 Park Street, PO Box 1500, Fonda, New York 12068
- (c) Appointed by the Chairman of the Board of Representatives of Otsego County, confirmed by Resolution of the Board:  
Margaret M. Kennedy (County Representative), and  
Craig Gelbsman (County Representative);  
197 Main Street, Cooperstown, NY 13326
- (d) Appointed by Chairman of the Board of Supervisors, confirmed by Resolution of the Board of Schoharie County:  
Steven Wilson (County Administrator);  
284 Main Street, PO Box 429, Schoharie, NY 12157
- (e) Appointed by the Mayor of the City of Rome, confirmed by the Common Council of the City of Rome:  
Mark Domenico (Chief Code Enforcement Officer);  
198 N Washington Street, Rome, NY 13440
- (f) Appointed by the Mayor of the City of Utica:  
Brian Thomas (Commissioner, Urban & Economic Development);  
1 Kennedy Plaza, Utica, New York 13502
- (g) Appointed by the Common Council of the City of Utica:  
Joseph A. Marino (Chair, Economic Development Committee);  
1 Kennedy Plaza, Utica, New York 13502

THIRTEENTH: The duration of the Corporation shall be perpetual.

FOURTEENTH: The Corporation shall indemnify each Corporation Member, each Corporation Director, each officer, and, to the extent authorized by the Board of Directors, each other person authorized to act for the Corporation or on its behalf, to the full extent to which indemnification is permitted under the Not-For-Profit Corporation Law.

FIFTEENTH: The Secretary of New York State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is as follows: Greater Mohawk Valley Land Bank, Mohawk Valley Economic Development District, 26 West Main St., PO Box 69, Mohawk NY 13407-0069.

SIXTEENTH: The By-laws of the Corporation may be adopted, amended or repealed by a majority of the voting Corporation Directors.

SEVENTEENTH: The Corporation will not do any of the following:

(a) Without the affirmative vote of all Corporation Members, increase the number of Corporation Members..

(b) Without the affirmative vote of two-thirds of the voting Corporation Directors, (i) dissolve or liquidate, in whole or in part, or institute proceedings to be adjudicated bankrupt or insolvent, (ii) consent to the institution of bankruptcy or insolvency proceedings against it, (iii) file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or a substantial part of its property, (v) make a general assignment for the benefit of creditors, (vi) admit in writing its inability to pay its debts generally as they become due or (vii) take any corporate action in furtherance of the actions set forth in clauses (i) through (vi) of this paragraph.

(c) Without the affirmative vote of all of the Corporation Directors, merge or consolidate with any other corporation, company or entity or, except to the extent contemplated above, sell all or substantially all of its assets or acquire all or substantially all of the assets or capital stock or other ownership interest of any other corporation, company or entity.

IN WITNESS WHEREOF, this certificate has been subscribed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Joseph P. Caruso, MVEDD, Incorporator: \_\_\_\_\_

Address: 26 West Main Street, PO Box 69, Mohawk, NY 13407

CERTIFICATE OF INCORPORATION

O F T H E

GREATER MOHAWK VALLEY LAND BANK CORPORATION

(Under Article 16 of the Not-For-Profit Corporation Law of the State of New York)

Filed by: