



City of Newburgh Council Work Session  
*Sesión de trabajo del Concejal de la  
Ciudad de Newburgh*  
*December 11, 2014*

6:00 p.m.  
AGENDA

1. Presentations

Presentaciones:

- a. Reminder: A Certificate of Achievement will be presented to the Newburgh Free Academy Goldbacks Varsity Football Team and to Head Coach Bill Bianco and Asst. Coaches for making it to the New York State Class AA Championship game.

*Recordatorio: Un Certificado de Reconocimiento va a ser presentado al grupo deportivo futbol de Goldbacks de la Newburgh Free Academy y a su entrenador Bill Bianco por haber llegado al juego de Campeonato AA del estado de Nueva York.*

- b. Reminder: A Certificate of Recognition will be presented to the City of Newburgh Police Officers who were involved in the rescue of the two children trapped in the snowbank.

*Recordatorio: Un Certificado de Reconocimiento va a ser presentado a los Oficiales de la Policia que estuvieron envueltos en el rescate de dos ninos atrapados en una banco de nieve.*

- c. Reminder: A Certificate of Achievement will be presented to Deborah Dresser for her work with the Newburgh Girl Power Program.

*Recordatorio: Un Certificado de Reconocimiento va a ser presentado a Deborah Dresser por su trabajo en el Programa de Newburgh "Poder de Niñas".*

- d. Reminder: A Certificate of Recognition will be presented to retailers who voluntarily choose not to sell tobacco products.

*Recordatorio: Un Certificado de Reconocimiento va a ser presentado a los dueños de tiendas quienes voluntariamente han escogido no vender productos de tabaco.*

- e. Reminder: A presentation will be given by Peter Smith and Deirdre Glenn regarding a Land Trust Proposal.

*Recordatorio: Habrá una Presentación por Peter Smith y Deirdre Glenn en referente a la Propuesta del Patronato de Terreno*

- f. Reminder: A presentation by Edward Weinstein Architecture on the redesign of the Newburgh Landing Pier with an opportunity of public input and comment.

*Recordatorio: Habrá una presentación por la firma de arquitectura Edward Weinstein en el rediseño del desembarcadero o muelle de Newburgh*

2. Reminder: Public Hearing

A Public Hearing is scheduled for December 15, 2014 to hear public comment concerning a Local Law adding Chapter 276 entitled "Tobacco" to the code of ordinances of the City of Newburgh.

Una Audiencia Pública está planificada para diciembre 15,2014 para escuchar el comentario público con referencia a una Lay local añadiendo el capítulo 276 titulado "Tabaco" al código de decretos de la Ciudad de Newburgh.

3. Reminder: Comptroller's Report:/Reporte del Contralor:

Monthly Financial Summary/*Resumen Mensual Financiero*

4. Finance/ Finanzas:

a. Resolution No.300 -2014

A resolution adopting the City of Newburgh 2015 Procurement Policy and Procedure.

*Una resolución para adoptar la Póliza y Procedimiento de Adquisición del 2015 de la Ciudad de Newburgh.*

5. Grants/Contracts and Agreements / Becas / Contratos y Convenios

a. Resolution No. 301– 2014

A resolution amending Resolution No. 25-2014 of February 10, 2014 to accept an additional grant award in an amount not to exceed \$3,024.00 from the County of Orange for the City of Newburgh's participation in the Stop-DWI Crackdown Enforcement Program.

*Una resolución enmendando resolución Nu. 25-2014 de febrero 10 del 2014 para aceptar una beca adicional en la cantidad a no exceder \$3,024.00 del Condado de Orange por la participación de la Ciudad de Newburgh en el Programa de Ejecución Forzosa para Detener cuando se guía mientras está intoxicado.*

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b. Resolution No. 302-2014

A resolution authorizing the City Manager to apply for and accept if awarded a grant from the United States Department of Agriculture (“USDA”) – National Institute of Food and Agriculture for the Food Insecurity Nutrition Incentive (FINI) Grant Program in an amount not to exceed \$100,000.00 to implement a pilot program to improve the availability and access of healthy food choices to residents of the City of Newburgh who participate in the Supplemental Nutrition Assistance Program (SNAP).

*Una resolución autorizando al Gerente de la Ciudad a aplicar y aceptar, si es otorgado, una beca del Departamento de Agricultura de los Estados Unidos(USDA) – un Programa de Beca del Instituto Nacional de Comida y Agricultura para el Incentivo de Nutrición de Inseguridad de Alimentación (FINI), por la cantidad a no exceder \$100,000.00 para implementar un programa piloto con el objetivo de mejorar la accesibilidad y la disposición de alimentos saludables a los residentes de Newburgh que participen en el Programa de Asistencia de Alimento Suplementario.*

6. Engineering / Ingeniería:

a. Resolution No. 303 -2014

A resolution authorizing the City Manager to execute a proposal and an agreement with McLaren Engineering Group in connection with structural engineering services for City Hall at a cost of \$6,200.00.

*Una resolución autorizando al Gerente de la Ciudad a llevar a cabo una proposición y un acuerdo con el Grupo de Ingeniería de McLaren en conexión con los servicios de ingeniería de estructura del Municipio al costo de \$6,200.00*

b. Resolution No. 304- 2014

A resolution authorizing the City Manager to execute an agreement with Access Imagery for a cost of \$12,820.00 and amending Resolution No: 247 – 2013, the 2014 budget for the City of Newburgh, New York to transfer \$12,820.00 from Conservation Advisory Council other services to GIS and Engineering Software Maintenance.

*Una resolución autorizando al Gerente de la Ciudad a llevar a cabo un acuerdo con ACESS Imagery por el costo de \$12,820.00 y enmendar Resolución Nu: 247-2013, el presupuesto de la Ciudad de Newburgh, Nueva York del 2014 a transferir \$12, 820 de otros servicios del Concejal de Conservación Consultativo a el Mantenimiento del Sistema Informativo de Ingeniería y GIS.*

c. Resolution No. 305-2014

A resolution of the City Council of the City of Newburgh supporting the application of Orange County for an Environmental Protection Agency Brownfield Assessment Grant to fund a Phase II assessment of the property known as the Diamond Candle factory site located in the town of New Windsor.

*Una resolución del Concejal de la Ciudad apoyando la aplicación del Condado de Orange para una valoración de la Beca de la Agencia de Protección Ambiental de Brownfield para financiar la segunda fase de valoración de la propiedad conocida como Diamond Candle Factory localizada en el pueblo de New Windsor.*

d. Resolution No. 306-2014

A resolution authorizing the City Manager to execute an agreement for vendor services with the County of Orange affirming the City of Newburgh's commitment to actively participate as a local government entity in the NYSEDA Cleaner, Greener Communities (CGC) Program, Phase II: Category II grant, which has been awarded to the County of Orange.

*Una resolución autorizando al Gerente de la Ciudad a llevar a cabo un acuerdo para servicios de un proveedor con el Condado de Orange ratificando el compromiso de la Ciudad de Newburgh para participar activamente como entidad del gobierno local en el NYSEDA, el Programa de Comunidades Ecológicas, Fase II: beca de Categoría 2, que ha sido otorgado a el Condado de Orange.*

7. Discussion / Discusión:

- a. Draft Local Law amending section C3.00 entitled "Municipal Officers enumerated" and adding section c3.12 Entitled "Residency Requirements" of the code of the City of Newburgh.

*Delinear la Ley Local para enmendar sección C300 titulado "Oficiales Municipales enumerados" y añadiendo sección c3.12 titulado "Requisitos de Residencia" del código de la Ciudad de Newburgh.*

- b. 2015 Insurance Renewal Package with the City of Newburgh and Arthur J. Gallagher.

*Paquete de Renovación del Seguro del 2015 entre la Ciudad de Newburgh y Arthur J. Gallagher.*

c. Community Workforce Agreement proposed by Laborers' Local 17.  
*Acuerdo de los Trabajadores de la Comunidad propuesto por Local de Obreros 17.*

d. Identification Cards for City Hall  
*Tarjetas de identificación para la Municipalidad.*

e. A proposed four-way stop sign at Water St. and Renwick St. and a four-way stop sign on Water St. and Washington St.

*Una señal de pare de cuatro lados para la calle Water y Renwick y una señal de pare de cuatro lados para la calle Water y Washington.*

f. The City's 150th Anniversary of the City Charter.  
*Aniversario de 150 años de cuando la Ciudad estableció sus estatutos.*

g. The layout of the Newburgh Illuminated Festival in June.  
*El Plan del Festival de la Iluminación en Newburgh que se hace en Junio.*

h. Mid Broadway Project.  
*El Proyecto de Mid Broadway.*

i. Town of Newburgh Sewer Connections  
*Las Conexiones de Acueductos del Pueblo de Newburgh*

8. Executive Session/ Sesión Ejecutiva:

a. Pending Litigation  
*Litigación Pendiente*

b. Collective bargaining  
*Negociación Colectiva*

c. Matters pertaining to the financial, credit history of a corporation.  
*Asuntos en referente al a finanza y la historia de crédito de una corporación.*

RESOLUTION NO.: 295 - 2014

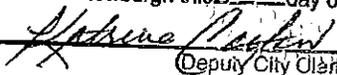
OF

NOVEMBER 24, 2014

RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR DECEMBER 15, 2014 TO HEAR PUBLIC COMMENT  
CONCERNING A LOCAL LAW ADDING CHAPTER 276 ENTITLED  
"TOBACCO" TO THE CODE OF ORDINANCES  
OF THE CITY OF NEWBURGH

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning "A Local Law Adding Chapter 276 entitled 'Tobacco' and Enacting Article I entitled 'Tobacco Retail License' and Article II entitled 'Sale to Persons under Age 19' to the Code of Ordinances of the City of Newburgh"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 15<sup>th</sup> day of December, 2014, in the 3<sup>rd</sup> Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held Nov. 24, 2014  
and that it is a true and correct copy of such original.  
Witness my hand and seal of the City of  
Newburgh this 25th day of Nov., 2014

  
Deputy City Clerk

LOCAL LAW NO.: \_\_\_\_\_ - 2014

OF

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**A LOCAL LAW ADDING CHAPTER 276 OF THE CODE OF ORDINANCES  
OF THE CITY OF NEWBURGH ENTITLED “TOBACCO” AND ENACTING ARTICLE I  
ENTITLED “TOBACCO RETAIL LICENSE” AND ARTICLE II ENTITLED “SALE TO  
PERSONS UNDER AGE 19”**

**BE IT ENACTED**, by the Council of the City of Newburgh, New York that Chapter 276 “Tobacco” be and is hereby added as follows:

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law Adding Chapter 276 entitled ‘Tobacco’ and Enacting Article I entitled ‘Tobacco Retail License’ and Article II entitled ‘Sale to Persons under Age 19’ to the Code of Ordinances of the City of Newburgh”.

**SECTION 2 - PURPOSE AND INTENT**

**WHEREAS**, tobacco use is the foremost preventable cause of premature death in the United States, and according to the 2014 Surgeon General Report, causes over 480,000 deaths in the United States each year; and

**WHEREAS**, tobacco companies sell products that are addictive and inherently dangerous, causing cancer, heart disease, and other serious illnesses; and

**WHEREAS**, the City of Newburgh has a substantial interest in reducing the number of individuals of all ages who use cigarettes and other tobacco products, and a particular interest in protecting adolescents from tobacco dependence and the illnesses and premature death associated with tobacco use; and

**WHEREAS**, an overwhelming majority of Americans who use tobacco products begin using such products while they are adolescents and become addicted to those products before reaching the age of 18 and the 2014 Surgeon General Report states that more than 3,200 young people under the age of 19 smoke their first cigarette each day in the United States; and

**WHEREAS**, the prevention of adolescent tobacco product use is detailed in Article 13-F of the New York State Public Health Law, known as the Adolescent Tobacco Use Prevention Act (ATUPA) which expressly prohibits the sale of tobacco products to minors; and

**WHEREAS**, although it is unlawful to sell tobacco products to minors, New York State Department of Health, The New York Youth Tobacco Survey 2008 finds that 8.4% middle school and 28% of high school students in the Hudson Valley Area who use cigarettes report that they usually purchase their cigarettes from a retail store; and

**WHEREAS**, research has found that higher tobacco retail outlet density is significantly associated with higher rates of youth smoking initiation and experimentation; and

**WHEREAS**, The New York State Tobacco Control Evaluation Program Tobacco Retail Outlet Density by Proximity to Schools and in Low Income Areas Orange County, New York Findings, a report by the Department of Health Behavior, Division of Cancer Prevention and Population Sciences, at Roswell Park Cancer Institute found that in 2012 of the 319 validated tobacco retail outlets located in Orange County, 110 or 34.5% are located in the Newburgh area and in Orange County, 16.3% (n=52 of 319) are located within a distance of 1,000 feet of a school; and

**WHEREAS**, research shows that a high concentration of tobacco outlets near schools provides our most vulnerable populations with ready access to tobacco and increases their exposure to tobacco retail marketing, which may increase their uptake of tobacco usage and creates an environment that promotes the social acceptability of tobacco use; and

**WHEREAS**, City of Newburgh has a substantial and important interest in reducing the illegal sale of tobacco products to minors; and

**WHEREAS**, studies have found a higher prevalence of current smoking at schools with more tobacco outlets within walking distance, and researchers suggest that limiting the proximity of tobacco outlets to schools may be an effective strategy to reduce youth smoking rates; and

**WHEREAS**, licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors; and

**WHEREAS**, restricting the number and the location of tobacco retailers and the associated marketing of tobacco products within those retail stores in the City is necessary to protect the public health, safety, and welfare of our youth; and

**WHEREAS**, a local licensing system for tobacco retailers is necessary and appropriate to protect the public health, safety, and welfare of our residents, particularly children, and will help ensure that retailers comply with the ATUPA, other tobacco control laws, and the business standards of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED THAT**, it is the intent of the City of Newburgh to implement effective measures through this Chapter to reduce the number of its tobacco retail outlets, regulate the location of its tobacco retail outlets, stop the sale of tobacco products to its youth, prevent the sale or distribution of contraband tobacco products in Newburgh, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

### SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add new Chapter 276 entitled “Tobacco”, Article I entitled “Tobacco License” and Article II entitled “Sale to Persons under Age 19” to read as follows:

#### ARTICLE I. TOBACCO LICENSE

##### **§ 276-1 Definitions.**

As used in this Chapter, the following terms shall have the meanings indicated:

ADMINISTRATIVE HEARING means a hearing by the City Manager or his designee.

ADULT-ONLY ESTABLISHMENT means a facility where the operator ensures or has a reasonable basis to believe (such as checking identification of any person appearing to be under the age of 26) that no person under the age of 21 is permitted entrance.

AGE-VERIFIED CUSTOMER means any individual who has presented a driver’s license or other photographic identification card issued by a government entity or educational institution indicating that the individual is of Legal Age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided however that such appearance shall not constitute a defense in any proceeding alleging a violation of this Chapter. It shall be an affirmative defense to a violation of this Chapter that the Tobacco Retailer successfully performed a Transaction Scan of an individual’s identification as defined by New York Public Health Law Section 1399-cc and that a Tobacco Product or Tobacco-Related Product was provided to such individual in reasonable reliance upon such identification and transaction scan.

APPLICANT means an individual, partnership, limited liability company, corporation, or other business entity seeking a Tobacco Retail License.

CITY CLERK means the City Clerk or Deputy City Clerk.

FIRE DEPARTMENT means the City of Newburgh Fire Department including the Bureau of Fire Prevention and the Bureau of Code Compliance

LEGAL AGE means the minimum age at which individuals are permitted to legally purchase tobacco products or tobacco-related products in the City of Newburgh.

NEW TOBACCO RETAIL LICENSE means any Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERSON means any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

POLICE DEPARTMENT means the City of Newburgh Police Department.

RENEWED TOBACCO RETAIL LICENSE means a Tobacco Retail License issued to an Applicant for the same location at which the Applicant possessed a valid Tobacco Retail License during the previous year.

SCHOOL means a public or private pre-kindergarten, kindergarten, elementary, middle, junior high or high school or alternative school.

TOBACCO PRODUCT or TOBACCO-RELATED PRODUCT means any manufactured product containing tobacco or nicotine, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, shisha, powdered and/or dissolvable tobacco products, liquid nicotine and electronic cigarette cartridges, whether packaged or not; any packaging that indicates it might contain any substance containing tobacco or nicotine; or any object utilized for the purpose of smoking or inhaling tobacco or nicotine products. However, "Tobacco Product" or "Tobacco-Related Product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco use cessation product or for other medical purposes and is being marketed and sold solely for that approved purpose.

TOBACCO RETAILER means any Person who sells or offers for sale any Tobacco Product or Tobacco-Related Product or any employee of such a Person.

TOBACCO RETAIL LICENSE means a license issued by the City Clerk to a Person to engage in the retail sale of Tobacco Products or Tobacco-Related Products in the City of Newburgh.

#### **§ 276-2 Tobacco Retail License**

A. Starting March 1, 2015, no Person shall sell, offer for sale, or permit the sale of Tobacco Products or Tobacco-Related Products to consumers in the City of Newburgh, without a valid Tobacco Retail License issued by the City Clerk. A Tobacco Retail License is not required for a wholesale dealer who sells Tobacco Products or Tobacco-Related Products to retail dealers for the purpose of resale only and does not sell any Tobacco Products or Tobacco-Related Products directly to consumers.

B. All Tobacco Retail Licenses issued pursuant to this section are nontransferable and non-assignable and are valid only for the Applicant and the specific address indicated on the Tobacco Retail License. A separate Tobacco Retail License is required for each address at which Tobacco and Tobacco-Related Products are sold or offered for sale. Any change in business ownership or business address requires a new Tobacco Retail License.

C. All Tobacco Retail Licenses issued pursuant to this section are valid for no more than one year and expire on February 28 following the effective date of the Tobacco Retail License. As set forth in Section 276-8, a Tobacco Retail License may be revoked by the Police Department prior to its expiration date for cause.

D. Applications for a New Tobacco Retail License shall be made on a form specified by the City Clerk, at least 30 days prior to March 1, 2015. The City Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

E. Applications for a Renewed Tobacco Retail License shall be made on a form specified by the City Clerk at least 30 days prior to the expiration of the current license. The City Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

F. Applications for a new or renewed Tobacco Retail License shall be accompanied by the fee set forth in Section 276-7.

G. The issuance of any Tobacco Retail License pursuant to this Chapter is done in the discretion of the City of Newburgh and shall not confer upon licensee any property rights in the continued possession of such a license.

### **§ 276-3 Issuance of Licenses**

A. Upon the receipt of a completed application for a New or Renewed Tobacco Retail License and the fee required by Section 276-7, the Police Department and the Fire Department upon the showing of proper credentials and in the discharge of his duties, may enter to inspect the location at which tobacco sales are to be permitted. The Police Department also may ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

B. At the request of the Fire Department, the Corporation Counsel is authorized to make application to the City Court of the City of Newburgh or any other court of competent jurisdiction for the issuance of a search warrant to be executed by a police officer in order to conduct an inspection of any premises believed to be subject to this chapter. The municipal officer may seek a search warrant whenever the owner, managing agent, or occupant fails to allow inspections of any dwelling unit contained in the rental property where there is a reasonable cause to believe that there is a violation of this chapter, the New York Uniformed Fire Prevention Building Code Act, or of any code of the City of Newburgh or any applicable fire code.

C. No Tobacco Retail License shall be issued by the City Clerk to an Applicant if one or more of the following bases for denial exists:

- (1) The information presented in the application is incomplete, inaccurate, false, or misleading;
- (2) The fee for the application has not been paid as required;

- (3) The Applicant does not possess a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance at the location for which an application is requested;
- (4) The Applicant seeks a New Tobacco Retail License at a location for which this Chapter prohibits the issuance of a New Tobacco Retail License;
- (5) The Applicant has previously had a Tobacco Retail License issued under this Chapter revoked;
- (6) A Tobacco Retail License issued under this Chapter for the same address or location previously has been revoked;
- (7) The Applicant has been found by a court of law or administrative body to have violated any federal, state or local laws pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs; (b) the payment or collection of taxes on Tobacco Products; (c) the display of Tobacco Products or of health warnings pertaining to Tobacco Products; or (d) the sale of Tobacco Products;
- (8) The Applicant is not in compliance with all applicable New York State Uniform Building Code, Fire Prevention Code, Property Maintenance Code, Electrical Code and Plumbing Code and the Code of Ordinances of the City of Newburgh; and
- (9) The Applicant has not paid to the City of Newburgh outstanding fees, fines, penalties, or other charges owed to the City of Newburgh.

**§ 276-4            Limitation on Number of Licenses Issued**

A. In the first year subsequent to the effective date of this Chapter, a Tobacco Retail License shall only be issued to an Applicant for the same location at which the Applicant possessed a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance 180 days prior to the effective date of this Chapter.

B. Except for the first year subsequent to the effective date of this Chapter, the total number of New and Renewed Tobacco Retail Licenses issued by the City Clerk in a given year shall not exceed the number of Tobacco Retail Licenses that were issued in the previous year.

C. Starting on March 1, 2016, the City Clerk shall issue only one New Tobacco Retail License for every two Tobacco Retail Licenses that were revoked during the previous year or for which no renewal application was submitted.

D. Whenever the number of valid applications for a New Tobacco Retail License exceeds the number of New Tobacco Retail Licenses that may be issued under this Section, licenses shall be granted using the following priorities:

- (1) New Tobacco Retail Licenses shall be granted, first, to any Applicant who will sell Tobacco Products or Tobacco-Related Products at an Adult-Only Facility.
- (2) New Tobacco Retail Licenses shall be granted, second, to any Applicant that held a valid Tobacco Retail License in the prior year for an establishment within 1,000 feet of the nearest property line of a school and who is not seeking renewal of that license. If there are more valid applications from such Applicants for New Tobacco Retail Licenses than the number of available New Tobacco Retail Licenses, the New Tobacco Retail Licenses shall be granted to those Applicants by lottery.
- (3) Any remaining available New Tobacco Retail Licenses shall be granted to eligible Applicants by lottery.

**§ 276-5            Certain Locations**

- A. No Tobacco Retail License shall be issued to any seller of tobacco products or tobacco-related products that is not in a fixed, permanent location.
- B. With the exception of the first year subsequent to effective date of this Local Law, no New Tobacco Retail License shall be issued to any establishment within 1,000 feet of the nearest point of the property line of a School.

**§ 276-6            Required License Display**

- A. Any Tobacco Retail License issued pursuant to this Local Law shall be displayed prominently at the location where the Tobacco Products or Tobacco-Related Products are sold so that it is readily visible to customers.
- B. Selling, offering for sale, or permitting the sale of any Tobacco Product or Tobacco-Related Product without a valid Tobacco Retail License displayed in accordance with Section 276-6(A) constitutes a violation of this Local Law.

**§ 276-7            Required Fee**

- A. Each application for a New or Renewed Tobacco Retail License shall be accompanied by a fee as set forth in Chapter 163 “Fees” of the Code of Ordinances of the City of Newburgh.
- B. Starting two years after the effective date of this Chapter, the City Council may, on an annual basis, modify the fee required pursuant to Section 276-7(A). The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

**§ 276-8 Revocation or Suspension of Licenses**

Any Person who is found to be in violation of the terms and conditions of this Local Law or for violation of any federal, state, or local law or regulation pertaining to (a) the display of Tobacco Products or Tobacco-Related Products or of health warnings pertaining to Tobacco Products or Tobacco-Related Products, or (b) the sale of Tobacco Products or Tobacco-Related Products shall have their City of Newburgh License suspended for up to 3 months for a first offense, 6 months for a second offense, or revoked for a third offense, after notice and an opportunity to be heard at an administrative hearing before the City Manager or his designee.

**§ 276-9 Violations and Enforcement**

A. The Police Department shall enforce the provisions of this Chapter. The Police Department and the Fire Department may conduct periodic inspections in order to ensure compliance with this Chapter. Nothing in this Chapter shall preclude the Fire Department and its Bureau of Fire Prevention and Bureau of Code Compliance from enforcing the New York State Uniform Fire Prevention and Building Code in accordance with all other New York State and local laws, rules and regulations.

B. In addition to the penalties provided for in Section 276-8, any Person found to be in violation of this Chapter shall be guilty, upon conviction, of an offense punishable by a fine of not less than \$500.00 for the first violation; not more than \$1,000 for a second violation; and not more than \$2,000.00 for the third and each subsequent violation within a two-year period or by imprisonment for a period not exceeding 1 year, or by both such fine and imprisonment. Each day on which a violation occurs shall be considered a separate and distinct violation.

**ARTICLE II. SALE TO PERSONS UNDER AGE 19**

**§ 276-10 Prohibitions and proof of age**

A. Any person operating a place of business wherein tobacco or tobacco-related products are sold or offered for sale is prohibited from selling such tobacco or tobacco-related products to individuals under nineteen (19) years of age.

B. Sale of such tobacco or tobacco-related products in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution that the individual is at least nineteen (19) years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty (26) years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of tobacco or tobacco-related products to an individual under nineteen (19) years of age.

**§ 276-11 Posting of sign**

Any person operating a place of business wherein tobacco or tobacco products are sold or offered for sale shall post in a conspicuous place, a sign upon which there shall be imprinted the following statement:

SALE OF CIGARETTES, CIGARS, PIPE TOBACCO, SNUFF, CHEWING TOBACCO, DIPPING TOBACCO, BIDIS, SNUS, SHISHA, POWDERED AND/OR DISSOLVABLE TOBACCO PRODUCTS, LIQUID NICOTINE AND ELECTRONIC CIGARETTE CARTRIDGES TO PERSONS UNDER 19 YEARS OF AGE IS PROHIBITED UNDER PENALTY OF LAW.

Such sign shall be printed on a white card in red capital letters at least  $\frac{3}{4}$  inch in height.

**§ 276-12 Enforcement; penalties for offenses**

A. Any person who shall violate any of the provisions of this Article or fail to comply therewith or who shall violate or fail to comply with any order made thereunder shall be punished as provided in § 276-9 for violation of this Chapter of the Code of Ordinances of the City of Newburgh.

B. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects. Each day that prohibited conditions exist shall constitute a separate offense.

C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

**§ 276-13 Severability**

The provisions of this Local Law are declared to be severable, and if any section or subsection of this Chapter is held to be invalid, such invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalidated provision.

**SECTION 4 - VALIDITY**

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

**SECTION 5 - EFFECTIVE DATE**

This Local Law shall be effective on March 1, 2015 and upon the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

DRAFT

RESOLUTION NO.: 300 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION ADOPTING THE CITY OF NEWBURGH  
2015 PROCUREMENT POLICY AND PROCEDURE**

**WHEREAS**, by Resolution No. 251-2013 of December 9, 2013, the City Council of the City of Newburgh adopted the City of Newburgh Procurement Policy and Procedure for 2014; and

**WHEREAS**, the City of Newburgh Procurement Policy and Procedure has been reviewed and revised for 2015; and

**WHEREAS**, this Council finds that adopting the City of Newburgh Procurement Policy and Procedure for 2015 is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Newburgh, New York hereby adopts the 2015 City of Newburgh Procurement Policy and Procedure, a copy of which is attached hereto and made a part of this Resolution; and

**BE IT FURTHER RESOLVED**, that this Policy shall take effect on January 1, 2015.



# City of Newburgh City Comptroller's Office

City Hall – 83 Broadway  
Newburgh, New York 12550

Tel. (845) 569-7322  
Fax (845) 569-7490

John J. Aber  
City Comptroller

[jaber@cityofnewburgh-ny.gov](mailto:jaber@cityofnewburgh-ny.gov)

**TO:** Michael Ciaravino, City Manager

**FROM:** John J. Aber, City Comptroller

**DATE:** December 15, 2014

**SUBJECT:** **2015 Procurement Policy**

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## I **PURPOSE**

The purpose of this memorandum is to set forth the policies and procedures for the procurement of goods and services for the City of Newburgh. It is the City's goal to purchase competitively, without prejudice or favoritism, and to seek the maximum value for monies expended. The policy is written to ensure compliance with all State and Federal procurement rules and regulations.

## II **GENERAL**

The Office of the Comptroller will be responsible for ensuring compliance with this memorandum.

## III **BASELINE CRITERIA FOR COMPETITIVE BIDS**

General Municipal Law requires that purchase contracts for supplies/materials, equipment and services involving an estimated annual expenditure exceeding \$20,000 and public work contracts exceeding \$35,000 be awarded after a formal competitive bid process. By definition, public work contracts are defined as improvements to public facilities, recreation, bridges, highways and dams. The competitive bid process will be conducted by the Office of the Comptroller. Detailed below are the steps for conducting a competitive bid:

- A. Requesting Department will submit a detail specification of the services required or materials needed to the Office of the Comptroller.
- B. The Office of the Comptroller will review the specifications and prepare a formal RFP (Request for Proposal) or a Small Procurement. The RFP or Small Procurement will be advertised in the City's 3 official newspapers and posted on the Empire State Purchasing Group Website (BidNet).
- C. RFP's and Small Procurements will remain open for a minimum of 15 days.

- D. For RFP's vendors must deliver their proposals in sealed packages to the Office of the Comptroller within the timeframe allotted under the RFP. Packages submitted after the prescribed timeframe will not be accepted.
- E. The Office of the Comptroller will conduct a bid opening after the allotted RFP timeframe. The bid opening will be open to all vendors and the public.
- F. Three representatives from the City of Newburgh will be required to attend the bid opening. The City employees will consist of: a representative from the Department requesting the material/service, a witness from the Office of the Comptroller to verify the opening was conducted fairly, and a secretary to record the bids.
- G. At the conclusion of the bid opening, the requesting Department will be responsible for reviewing and analyzing all bids and making a determination to award to the lowest and most responsive bidder. The justification to award must be submitted to the Office of the Comptroller for review.
- H. Once reviewed and approved by the City Comptroller the winning bidder will be notified and if accepts, a contract will be prepared in conjunction with Corporation Counsel and submitted to the City Council for approval by Resolution. If the winning declines the offer, the City of Newburgh will go to the second lowest most responsive bidder.
- I. Once the Resolution is approved by the City Council, the requesting Department will submit through KVS a purchase requisition. All documents related to the purchase must be attached to the requisition. This includes the Council Resolution and the contract (if applicable).
- J. The City Comptroller will approve the requisition and release the Purchase Order. Once the Purchase Order is released, the vendor is authorized to move forward.
- K. For Small Procurements, the process will remain the same as outlined above except vendors will be able to electronically submit their bids to the Office of the Comptroller for review. There will be no formal bid opening for Small Procurements.
- L. The Office of the Comptroller will determine when it's appropriate to do a RFP vs. a Small Procurement.

#### **IV BASELINE CRITERIA FOR NON-COMPETITIVE BIDS**

While competitive bids are not required for purchases under \$20,000 (\$35,000 for public work), the City must still ensure the best price and service is obtained. Detailed below are the steps for purchasing items/services that are not required to be bid competitively:

- A. Items or services costing under \$10,000 require no documentation. Departments can select a vendor and submit a purchase requisition in KVS.
  - a. Once a Department purchases in the aggregate \$10,000 from the same vendor within the same Fiscal Year for the same items and/or services they must follow the bidding requirements detailed in item B (below).

- B. Items or services costing between \$10,001 and \$19,999 require three written quotes. The Department will select the lowest quote and submit a requisition in KVS. Departments are required to attach all quotes to the requisition.
  - a. Once a Department purchases in the aggregate \$20,000 from the same vendor within the same Fiscal Year for the same items and/or services they must follow the bidding requirements detailed in Section III Competitive Bidding.
- C. All items or services over \$20,000 (\$35,000 for public work) are required to follow the steps outlined in Section III Competitive Bids.

## V **EXEMPT FROM BIDDING**

The following types of purchases are exempt from bidding (competitive and/or non competitive).

- A. Items or services available on a GSA (Govt. Services Agencies) or OGS (Office of General Services) contract.
- B. Blanket or Requirement contracts created by other municipalities that allow piggy-backing.
- C. Emergency Procurement (see section VI)
- D. Professional Service Contracts (see section VII)
- E. Preferred Source Vendors (see section VIII)
- F. Sole Source (see section IX)

## VI **EMERGENCY PROCUREMENT**

General Municipal Law defines a “public emergency” as “arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants of the City require immediate action which cannot await competitive bidding”. Detailed below are the steps for utilizing the Emergency Procurement method:

- A. Obtain in writing (either email or formal written approval) from the City Manager authorization to commence emergency work or procure materials to mitigate the hazard or danger.
- B. After approval is granted by the City Manager, and when practical, obtain at least 3 written or verbal vendor quotes.
- C. Department(s) responsible for remediating the emergency authorizes the vendor to commence work or deliver materials.

- D. Within 24 hours of the emergency declared and approved by City Manager, the Department will enter a requisition into KVS and attach all supporting documentation to the requisition.
- E. The Office of the Comptroller will approve the requisition and issue a Purchase Order.

## **VII PROFESSIONAL SERVICES**

Professional Services are defined in New York case law and Comptroller opinions. As a general guideline, Professional Services required specialized or technical skills or expertise, training, license or certification, exercise of judgment or discretion, a high degree of creativity and/or a relationship of personal trust and confidence. Examples of Professional Services include:

- A. Physicians
- B. Engineers
- C. Surveyors
- D. Attorneys
- E. Designers/Architects
- F. Insurance/Financial Service firms

## **VIII PREFERRED SOURCE EXCEPTION FOR PURCHASE CONTRACTS**

To advance special social and economic goals, certain providers have 'preferred source' status under the law. The acquisition of commodities and/or services from preferred sources is exempt from statutory competitive procurement requirements. Except in emergency situations, when commodities or good/services are available from a preferred source, they must be purchased from one of the preferred source providers identified below:

- A. The New York State Department of Corrections, Correctional Industries Program (CORCRAFT)
- B. Approved charitable non-profit making agencies for the blind
- C. Equal priority to qualified non-profit making agencies for all other severely disabled persons, a qualified special employment program for mentally ill persons or a qualified veteran's workshop.

## **IX SOLE SOURCE**

Sole Source procurement is an exception to the general rules and policies governing the procurement of goods and/or services. Sole Source procurement may only be used in rare and extraordinary cases where the goods or services sought and required are manufactured, sold or performed by only one entity and/or individual. Generally, this will only apply to the following situations:

- A. Only one company in the world makes and sells a certain good or provides a certain service.

- B. Only one company in the world can service or maintain the equipment without voiding the warranty. (Note: this only applies during the warranty period. After warranty expiration, repairs and maintenance must be bid).
- C. Leasing equipment such as postal machines or copiers that have a certain type of consumable component (e.g. ink cartridges) that must be used to avoid breaching a warranty or a maintenance provision of a lease.
- D. Services performed by companies that traditionally have territories (e.g. cable TV or certain type of equipment dealerships).
- E. Software licensing and/or maintenance contracts specific to the software.

**In determining whether a purchase qualifies for a Sole Source exemption, the Office of the Comptroller must document at a minimum:**

- A. The unique benefits to the City of the product or service as compared to other products or services available in the marketplace.
- B. That no other product or service provides substantially equivalent or similar benefits.
- C. Determine the benefits received and the cost of the product or service is reasonable in comparison to other products or services in the marketplace.
- D. There is no possibility of competition from competing dealers or distributors.

**X PROCESSING PAYMENTS**

Once supplies/materials are delivered and/or services rendered, the Office of the Comptroller will be responsible for issuing payments. Payments will be processed twice a week (Tuesdays and Thursdays). Below details the process for processing vendor payments:

- A. Vendor invoices are to be submitted directly to the Office of the Comptroller. Each invoice must include the Purchase Order number or contract number.
- B. The Office of the Comptroller will scan the invoice to an electronic filing system which will also route the invoice to the requesting Department for sign-off.
- C. The requesting Department is responsible for digitally signing the invoice and sending it (electronically) back to the Office of the Comptroller. Signing the invoice confirms the supplies/materials were delivered and/or services rendered and the vendor can be paid.
- D. The Office of the Comptroller will process the payment by either issuing a check, EFT (Electronic Funds Transfer) or E-Payable.
- E. In cases where payments are issued by voucher (e.g. medical bills, county and school taxes), the Office of the Comptroller will be responsible for preparing the payment

voucher. All vouchers must be reviewed and approved by the City Comptroller before payment is processed

**This Policy takes effect January 1, 2015 and replaces all existing procurement policies issued by the City of Newburgh Office of the Comptroller.**

RESOLUTION NO. 301 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AMENDING RESOLUTION NO. 25-2014 OF  
FEBRUARY 10, 2014 TO ACCEPT AN ADDITIONAL GRANT AWARD  
IN AN AMOUNT NOT TO EXCEED \$3,024.00 FROM THE COUNTY OF ORANGE  
FOR THE CITY OF NEWBURGH'S PARTICIPATION IN THE  
STOP-DWI CRACKDOWN ENFORCEMENT PROGRAM**

**WHEREAS**, by Resolution 25-2014 of February 10, 2014 the City Council authorized the Interim City Manager or the Chief of Police as Manager's designee to execute an Inter-Municipal Agreement with the County of Orange confirming the City's participation in the STOP-DWI Program for the enforcement period of January 30, 2014 through January 1, 2015 and provided the City of Newburgh with an award not to exceed \$2,959.00 covering 60 man-hours for the First Enforcement Period of 2014 (March 13, 2014 - May 31, 2014), and for a total award in an amount not to exceed \$5,544.00 for the STOP-DWI Crackdown Enforcement; and

**WHEREAS**, the City of Newburgh has been notified of an additional grant award not to exceed \$3,024.00 to support the following two (2) Crackdown Campaigns which include Thanksgiving (November 26, 2014 through November 30, 2014) and the Holiday Season National (December 12, 2014 through January 1, 2015); and

**WHEREAS**, this Council has determined that accepting of such additional funds is in the best interests of the City of Newburgh and its residents;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to receive an additional grant award in an amount not to exceed \$3,024.00 from the County of Orange under the terms of the STOP-DWI Program and under the terms and conditions of the Inter-Municipal Agreement, for the provision of Special Police Overtime STOP-DWI Patrols for a total grant award of \$8,568.00; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

RESOLUTION NO.: <sup>302</sup>\_\_\_\_\_ - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED A GRANT FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE (“USDA”) – NATIONAL INSTITUTE OF FOOD AND AGRICULTURE FOR THE FOOD INSECURITY NUTRITION INCENTIVE (FINI) GRANT PROGRAM IN AN AMOUNT NOT TO EXCEED \$100,000.00 TO IMPLEMENT A PILOT PROGRAM TO IMPROVE THE AVAILABILITY AND ACCESS OF HELATHY FOOD CHOICES TO RESIDENTS OF THE CITY OF NEWBURGH WHO PARTICIPATE IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)**

**WHEREAS**, The USDA has announced a new grant program that will help participants in the Supplemental Nutrition Assistance Program (SNAP) afford fruits and vegetables; and

**WHEREAS**, the FINI Pilot Project will test innovative strategies to increase the purchase of fruits and vegetables by low-income consumers participating in SNAP; and

**WHEREAS**, some of the proposed activities are as follows: Improvement of Access points into the food industry through the Downing Park Hydroponic Greenhouse Project; Targeted Education Program to build interest in healthy, local food; Vegetable Truck or mobile vending business to deliver quality product, along with nutrition information, food budgeting and food preparation; and

**WHEREAS**, the City of Newburgh desires to submit an application for funds in an amount not to exceed \$100,000.00 with a dollar-for-dollar match of cash and in-kind services of non-federal funds; and

**WHEREAS**, this Council has determined that making such application is in the best interests of the City of Newburgh and its residents;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded a grant from the United States Department of Agriculture for the Food Insecurity Nutrition Incentive Grant Program in an amount not to exceed \$100,000.00; and he is hereby further authorized to execute any documents in connection with such grant and to take all measures as may be appropriate and necessary to carry out such program.

RESOLUTION NO.: 303 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A PROPOSAL AND AN AGREEMENT WITH  
McLAREN ENGINEERING GROUP IN CONNECTION WITH STRUCTURAL  
ENGINEERING SERVICES FOR CITY HALL AT A COST OF \$6,200.00**

**WHEREAS**, the City of Newburgh wishes to accept a proposal and execute an agreement with McLaren Engineering Group in connection with a structural investigation, egress study and ADA compliance evaluation for City Hall; and

**WHEREAS**, the proposal includes investigation, reporting, and recommendations for remediation; and

**WHEREAS**, the cost for these services will be \$6,200.00, which shall be derived from A.1440.0455, Engineering Consultants Services; and

**WHEREAS**, the City Council has reviewed the annexed proposal, terms and conditions, and has determined that retaining such engineering services would be in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a proposal and an agreement, subject to terms and conditions as may be required by the City Engineer and Corporation Counsel, with McLaren Engineering Group in connection with structural engineering services for City Hall at a cost of \$6,200.00.



bridge, highway & rail engineering  
entertainment engineering  
subaqueous investigation  
civil & site engineering  
structural design  
marine facilities  
geotechnics  
surveying  
forensics

September 30, 2014

City of Newburgh  
City Engineer  
83 Broadway  
Newburgh, New York 12550

Attn: Jason C. Morris, P.E.

Email: [jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)

Re: Newburgh City Hall - 2014 Renovation  
Newburgh, New York

PROPOSAL NO. 140898

McLaren Engineering Group (MEG) is pleased to submit our proposal to provide structural engineering investigation services for Newburgh City Hall located at 83 Broadway in Newburgh, New York.

## DESCRIPTION

The City of Newburgh is interested in retaining a Structural Consultant to conduct an investigation into the origin of a sagging second floor in City Hall. Additionally, code compliance regarding the existing means of egress and ADA compliance is to be investigated. We will prepare a report on the causes of the sagging floor and a code compliance report of the egress issues as well as options for remediating these deficiencies including budgetary construction cost estimates. From this report, the Town will direct MEG as to options to be developed in Phase 2 - Design Services. A proposal for Phase 2 scope and fee will be prepared under separate cover.

The City Hall Building is a four story masonry building approximately 85 feet by 52 feet with additions to the south and west sides.

## PHASE 1 - Inspection and Report

1. Site visit to meet with City representatives to review existing documents, to discuss access into confined spaces (ceilings, etc.) and to map and measure code egress issues.

Offices: New York, Maryland, Florida, Connecticut, California

Licensed in:

Alabama • Arizona • Arkansas • California • Colorado • Connecticut • Delaware • District of Columbia • Florida • Georgia • Hawaii • Idaho • Illinois • Indiana • Kansas • Kentucky • Louisiana • Maine • Maryland • Massachusetts • Michigan • Minnesota • Mississippi • Missouri • Nebraska • Nevada • New Hampshire • New Jersey • New Mexico • New York • North Carolina • Ohio • Oklahoma • Oregon • Pennsylvania • Rhode Island • South Carolina • Tennessee • Texas • Trinidad & Tobago • Utah • USVI • Vermont • Virginia • Washington • West Virginia • Wisconsin • Wyoming

**M. G. McLAREN, P.C.**

100 Snake Hill Road

West Nyack, New York 10994

Phone (845) 353-6400

Fax (845) 353-6509

e-mail: [mgmclaren@mgmclaren.com](mailto:mgmclaren@mgmclaren.com)

On the web: [www.mgmclaren.com](http://www.mgmclaren.com)

2. Additional site visit by staff Engineers to perform a more rigorous investigation of conditions, including accessing the ceilings and floors to understand the nature of the deficiencies.
3. Assessment of conditions as they affect structural capacity/serviceability and determine the egress capacity and code compliance issues.
4. Preparation of a report of our findings and recommendations with anticipated budgetary costs to remediate.

**FEE FOR PHASE 1**

**\$ 6,200**

**PHASE 2 - Construction Documents**

1. To be provided after Phase 1 is completed and the scope of services is better defined.

**HOURLY RATES**

Productive Principal	\$245/hr	Sr. CAD Operator	\$125/hr
Associate Principal	\$215/hr	CAD Operator	\$100/hr
Associate	\$185/hr	Jr. CAD Operator	\$ 75/hr
Associate Land Surveyor	\$155/hr	Chief of Field Operations	\$120/hr
Senior Engineer III/IV	\$165/hr	Diver	\$155/hr
Senior Engineer I/II	\$140/hr	Tender	\$130/hr
Technical Design Mgr.	\$155/hr	Sr. Technician	\$120/hr
Sr. Technical Designer	\$135/hr	Jr. Technician	\$ 80/hr
Staff Engineer II/III	\$120/hr	Principal Survey Technician	\$ 90/hr
Staff Engineer I	\$110/hr	Intern	\$ 58/hr
Junior Engineer	\$100/hr	Technical Typist	\$ 85/hr
Chief CAD Operator	\$135/hr		

**EXCLUSIONS**

Specifically excluded from this proposal and billable at the hourly rates defined above are the following:

1. Building probes will be performed by the City of Newburgh. Probe locations will be by MEG.



2. Corrective revisions due to errors in fabrication or placement of structural items by the Contractor or his subcontractors.
3. Substantial revisions due to scope of services.
4. Special inspection of construction.
5. Review and advice on the disposition of Contractor's change orders, created by the Owner, Architect or Contractor.
6. Written, description of changes to drawings (narratives), specifics, etc. when issuing drawing revisions.
7. MEG excludes all environmental testing, permitting and inspection, and asbestos remediation unless noted otherwise above.

#### **REIMBURSABLE EXPENSES**

The following expenses shall be reimbursed at 1.0 times our cost:

1. Reproduction, mailing and courier costs associated with the execution of this contract.
2. Travel costs for site visits.
3. Laboratory testing of soils, concrete cylinders, steel welds or other items requiring such testing.

#### **INFORMATION REQUIRED**

It shall be incumbent upon the Architect to provide us with the following:

1. Title and edition of Building Code in force, and identification of any amendments in effect.
2. Architectural plans, details, and specifications.
3. A compilation of structural design requirements if different than building code requirements.
4. Timely provision of drawings for all trades, including mechanical and electrical gravity loads, location of openings and chases.

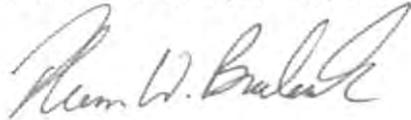


This proposal is subject to the terms and conditions which follow and shall remain valid only until October 31, 2014 unless it is accepted as a contract. Hourly rates defined above are subject to annual revision January 1.

Should you find this proposal acceptable, kindly sign and return one copy to serve as our contract. Work shall commence upon receipt of signed contract.

Very truly yours,

The Office of  
**M. G. McLAREN, P.C.**  
d/b/a McLaren Engineering Group



Thomas W. Broderick, P.E., LEED AP  
Division Chief Structures Division

TWB/bes

cc: RLW/DFB, KRR, WJM – Internal, Proposal File

ACCEPTED:

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For City of Newburgh

Title

Date



## TERMS AND CONDITIONS

1. **SERVICES TO BE PROVIDED.** M.G. McLaren, P.C.d/b/a McLaren Engineering Group (MEG), through and by its officers, employees and subcontractors, (hereinafter MEG) is an independent consultant and agrees to provide Owner, for its sole benefit and exclusive use, consulting services set forth in our proposal. No third party beneficiaries are intended by this agreement.
2. **PAYMENT TERMS.** Owner agrees to pay MEG's invoice upon receipt. If payment is not received within 30 days from the Owner's receipt of MEG's invoice, Owner agrees to pay a service charge on the past due amount at the greater of 1% per month or the allowable legal rate, including reasonable attorney's fees and expenses if collected through an attorney. No deduction shall be made from MEG's invoice on account of liquidated damages unless expressly included in the Agreement. Owner receipt of invoice will be presumed three days after mailing by MEG first class, with adequate postage attached. Time is of the essence for this provision.
3. **TERMINATION.** Either party may terminate this Agreement without cause upon 30 days prior written notice. This Agreement will terminate automatically upon the insolvency of Owner. In the event Owner requests termination prior to completion of the proposed services, Owner agrees to pay MEG for all reasonable charges incurred to date and associated with termination of the work, plus a termination fee of 10% of the total fee under this agreement.

If the Project is suspended for more than thirty consecutive days, for reasons other than MEG's fault, MEG shall be compensated for services performed prior to such suspension. When the project is resumed, our compensation shall be equitably adjusted.

If Owner abandons the Project for more than ninety consecutive days, MEG may terminate this Agreement by giving written notice. MEG shall be compensated for all services performed prior to such abandonment, plus 10% of MEG total fee under this Agreement, together with reimbursables then due.

4. **STANDARD OF CARE.** MEG will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of MEG's profession practicing in the same or similar locality at the time of service. No other warranty, express or implied, is made or intended by MEG's proposal or by its oral or written reports.
5. **INSURANCE.** MEG will effect and maintain insurance to protect themselves from claims arising out of the performance of professional services under this Agreement and caused by any error, omission or negligent act for which we are legally liable. MEG will maintain this insurance in force, if available, after the completion of professional services under this Agreement until the expiration of any applicable statutes of limitation. In the event there is no such statute specifically applicable to design and construction of improvements to real property, this insurance, if available, shall be maintained in force for a period of six (6) years after the date of substantial completion of the Project as agreed to.

Unless otherwise agreed, MEG will effect and maintain insurance to protect ourselves from claims under workers' or workmen's compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property including loss of use resulting therefrom; and from damage to or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.

The insurance required above shall be as provided below. MEG will file certificates of insurance for each type and amount upon request:

Professional Liability Insurance (Errors & Omissions), with a limit of \$2,000,000 for each claim and \$2,000,000 in the aggregate.

Comprehensive General Liability - \$1,000,000 per occurrence, \$2,000,000 Aggregate Bodily Injury and Property Damage; Blanket Contractual All Operations Completed Operations; \$1,000,000 Personal Injury A.B.C., plus \$5,000,000 Excess Liability Umbrella.

Worker's Compensation/Coverage A - Statutory/Coverage B - \$1,000,000

6. **SITE OPERATIONS.** Owner will arrange for right-of-entry with safe access to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services.

MEG will take reasonable precautions to minimize damage to the property caused by its operations. Unless otherwise stated in MEG's proposal, the Contract Sum does not include cost of restoration due to any related damage, unless such damage results directly from MEG's negligent actions. If Owner requests MEG to repair such damage, it will be done at an appropriate additional cost to be paid by Owner.

MEG shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of the contractor (Work), nor shall MEG be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

7. **UNFORESEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing MEG's services. If this occurs, MEG will promptly notify and consult with Owner, but will act based on MEG's sole judgment where risk to MEG's personnel is involved. Possible actions could include:

- a. Complete the original Scope of Services in accordance with the procedures originally intended in this Agreement, if practicable in MEG's judgment;
- b. Agree with Owner to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;
- c. Terminate the services effective on the date specified by MEG in writing.

8. **DOCUMENTS.** MEG will furnish Owner the agreed upon number of written reports and supporting documents. These instruments of service are furnished for Owner's exclusive internal use and reliance, use of Owner's counsel and for regulatory submittal in connection with the project provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:

- a. All documents including paper documents and electronic files generated by MEG under this Agreement shall remain the sole property of MEG. Any unauthorized use or distribution of MEG's work shall be at Owner's sole risk and without liability to MEG.
- b. If Owner desires to release, or for MEG to provide, our documents to a third party not described above for that party's reliance, MEG will agree to such release provided MEG receives written acceptance from such third party to be bound by acceptable terms and conditions similar to this Agreement. Documents provided for disclosure of information only will not require separate agreement. Owner acknowledges and agrees to inform such third party that MEG's documents reflects conditions only at the time of the study and may not reflect conditions at a later time. Owner further acknowledges that such request creates potential conflict of interest for MEG and by this request Owner waives any such claim if MEG complies with the request.
- c. Owner agrees that all documents furnished to Owner or Owner's agents or designees, if not paid for will be returned upon demand and will not be used by Owner or any other entity for any purpose whatsoever. Owner further agrees that documents produced by MEG pursuant to this Agreement

will not be used for any project not expressly provided for in this Agreement without MEG's prior written approval.

- d. Owner shall furnish documents or information reasonably within Owner's control and deemed necessary by MEG for proper performance of our services. MEG may rely upon Owner-provided documents in performing the services required under this Agreement; however, MEG assumes no responsibility or liability for their accuracy. Owner-provided documents will remain the property of Owner, but MEG may retain one confidential file copy as needed to support our report.
9. **CLAIMS.** The parties agree to attempt to resolve any dispute without resort to litigation, including use of mediation, prior to filing of any suit. However, in the event a claim results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in pursuing and defending the claim, including reasonable attorney's fees.
10. **OPINIONS OF COST.** If included in our scope of services, MEG will use its best efforts and experience on similar projects to provide realistic opinions of costs for remediation or construction as appropriate based on reasonably available data, MEG's designs or MEG's recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation. Owner understands actual costs of such work depend on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond MEG's control.
11. **TESTIMONY.** Should MEG or any MEG employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing or trial, in relation to services provided under this Agreement, and MEG is not a party in the dispute, then MEG shall be compensated by Owner for the associated reasonable expenses and labor for MEG's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides MEG such compensation, Owner will receive a credit or refund on any related double payments to MEG.
12. **CONFIDENTIALITY.** MEG will maintain as confidential any documents or information provided by Owner and will not release, distribute or publish same to any third party without prior permission from Owner, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to Owner.
13. **PRIORITY OVER FORM AGREEMENTS/PURCHASE ORDERS.** The Parties agree that the provisions of these terms and conditions shall control over and govern as to any form writings signed by the Parties, such as Owner Purchase Orders, Work Orders, etc., and that such forms may be issued by Owner to MEG as a matter of convenience to the Parties without altering any of the terms or provisions hereof.
14. **SURVIVAL.** All provisions of this Agreement for indemnity or allocation of responsibility or liability between Owner and MEG shall survive the completion of the services and the termination of this Agreement.
15. **SEVERABILITY.** In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.
16. **ASSIGNMENT.** This Agreement may not be assigned by either party without the prior permission of the other.
17. **INTEGRATION.** This agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.
18. **LIMIT OF LIABILITY**

- A. In the event Owner consents to, allows, authorizes or approves of changes to any plans, specifications or other construction documents, and these changes are not approved in writing by MEG, the Owner recognizes that such changes and the results thereof are not the responsibility of MEG. Therefore, the Owner agrees to release MEG from any liability arising from the construction, use or result of such changes. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the design Professional and all his employees, officers, and directors harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) arising from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of MEG or its employees, officers or directors.
- B. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or MEG. MEG's services under this Agreement are being performed solely for the Owner's benefit, and no other entity shall have any claim against MEG because of this Agreement or the performance or nonperformance of services hereunder. The Owner agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.
- C. The Owner agrees to limit MEG's liability and his or her consultants to the Owner and to all Construction Contractors and Subcontractors on the project, due to MEG's negligent acts, errors, or omissions, such that the total aggregate liability of MEG to all those named, including legal fees and costs, shall not exceed \$10,000.

The Owner shall make no claim for professional negligence, either directly or in a third party claim, against MEG unless the Owner has first provided MEG with a written certification executed by an independent design professional currently practicing in the same discipline as MEG and licensed in the State of this project. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of an Engineer performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to MEG not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation or judicial proceeding.

- D. The Owner shall promptly report to MEG any defects or suspected defects in MEG's work or services of which the Owner becomes aware, so that MEG may take measures to minimize the consequences of such a defect. Failure by the Owner, and the Contractors or Subcontractors to notify MEG, shall relieve MEG of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.
- E. Payments to MEG shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of offsetting reimbursement or credit from other parties causing Additional Services or expenses. No withholdings, deductions or offsets shall be made from MEG's compensation for any reason unless MEG has been found to be legally liable for such amounts.
- F. If, due to MEG's error, any required item or component of the project is omitted from MEG's construction documents, MEG shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will MEG be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.
- G. All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after three (3) years have passed from the date MEG concluded

rendering professional services, issuance of the Certificate of Completion or Certificate of Occupancy, whichever is sooner, unless MEG's services shall be terminated earlier, in which case the date of termination of this Agreement shall be used.

- H. It is intended by the parties to this Agreement that MEG's services in connection with the project shall not subject MEG's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against MEG, a New York corporation, and not against any of MEG's employees, officers or directors.
- I. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Owner nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other incidental, indirect, or consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of implied warranty. Both the Owner and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
- J. Because evaluation of the existing structure requires that certain assumptions be made regarding existing conditions, and because some of these assumptions cannot be verified without expending additional sums of money or destroying otherwise adequate or serviceable portions of a structure, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold MEG harmless from and against any and all damage, liability and cost, including reasonable attorneys' fees and defense costs, arising or allegedly arising out of the professional services under this Agreement, except for the sole negligence or willful misconduct of MEG.

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RESOLUTION NO.: 304 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ACCESS GEOGRAPHIC, INC. TO PERFORM WORK TO UPGRADE THE ORTHORECTIFIED DIGITAL AERIAL IMAGERY FOR A COST OF \$12,820.00 AND AMENDING RESOLUTION NO: 247 - 2013, THE 2014 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK TO TRANSFER \$12,820.00 FROM CONSERVATION ADVISORY COUNCIL OTHER SERVICES TO GIS AND ENGINEERING SOFTWARE MAINTENANCE**

**WHEREAS**, on February 4, 2008, the City of Newburgh executed an agreement with the Office of Cyber Security and Critical Infrastructure Coordination for upgraded Geographic Information Systems Digital Orthoimagery Data; and

**WHEREAS**, the City of Newburgh GIS and Engineering Department have requested to enter into an agreement with Access Geographic, Inc. to perform work to upgrade the orthorectified digital aerial imagery to a higher resolution and upgrade the date of the imagery from 2007 to 2014; and

**WHEREAS**, the cost for such imagery is Twelve Thousand Eight Hundred Twenty (\$12,820.00) Dollars and shall be derived from budget line A.1440.0448; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the annexed agreement with Access Geographic, Inc. to perform work to upgrade the orthorectified digital aerial imagery for a cost of \$12,820.00; and

**BE IT FURTHER RESOLVED**, by the Council of the City of Newburgh, that Resolution No: 247-2013, the 2014 Budget of the City of Newburgh, is hereby amended as follows for the upgrade of the orthorectified digital aerial imagery:

	<u>Decrease</u>	<u>Increase</u>
A.1440.0448 GIS and Engineering Software Maintenance		\$12,820.00
A.7129.0448.0001.0000 Conservation Advisory Council - Other Services	\$12,820.00	
	<u>Total</u>	\$12,820.00

RESOLUTION NO. 305 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH  
SUPPORTING THE APPLICATION OF ORANGE COUNTY FOR AN  
ENVIRONMENTAL PROTECTION AGENCY BROWNFIELD ASSESSMENT GRANT TO  
FUND A PHASE II ASSESSMENT OF THE PROPERTY KNOWN AS THE DIAMOND  
CANDLE FACTORY SITE LOCATED IN THE TOWN OF NEW WINDSOR**

**WHEREAS**, the United States Environmental Protection Agency's ("EPA") Brownfields Program is designed to empower states, communities and other stakeholders to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields sites; and

**WHEREAS**, the EPA provides technical and financial assistance for brownfields activities through an approach based on four main goals, which include protecting human health and the environment, sustaining reuse, promoting partnerships, and strengthening the marketplace; and

**WHEREAS**, state and local governments are eligible to apply for EPA Brownfields Assessment Grants to provide funding through a revolving loan fund that provides loans and sub-grants to carry out cleanup investigations and activities at brownfields sites; and

**WHEREAS**, the County of Orange has advised of its desire to make an application for EPA grant funding with hopes that the grant could fully fund their proposal to prepare a Phase II Environmental Assessment of the property known as the Diamond Candle Factory, located in the Town of New Windsor, at an approximate cost of \$26,000.00; and

**WHEREAS**, the County of Orange has requested that the City Council of the City of Newburgh, New York express its support of such application and its commitment to assisting with the implementation of their Community Involvement Plan by providing space for public meetings and posting notices in City Hall for the purposes of public outreach; and

**WHEREAS**, the City of Newburgh seeks to construct a pedestrian nature trail along the northern bank of the Quassaick Creek at some point in the future, and the County's Diamond Candle Factory site is essential to providing future public access and parking for this future trail; and

**WHEREAS**, this Council has determined that such support and commitment is in the best interests of the City of Newburgh, Town of New Windsor, County of Orange for the future development to provide public access to the Quassaick Creek corridor and future Quassaick Creek trail;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Newburgh, New York, hereby supports the application of Orange County for an Environmental Protection Agency Brownfield Assessment Grant to fund a Phase II assessment of the property known -as the Diamond Candle Factory Site located in the Town of New Windsor; and

**BE IT FURTHER RESOLVED**, that this Council further expresses its commitment to assisting with the implementation of the County's Community Involvement Plan by providing space for public meetings and posting notices in City Hall.

***Phase I Environmental Site  
Assessment***

**TCC Parcel 34 Site  
(Diamond Candle Factory Property)  
City of Newburgh and  
Town of New Windsor,  
Orange County, New York**

**April 2002**

**Prepared for:**

Mid Hudson Patterns For Progress  
Desmond Campus  
6 Albany Post Road  
Newburgh, New York 12550

***Phase I Environmental Site  
Assessment***

**TCC Parcel 34 Site  
(Diamond Candle Factory Property)  
City of Newburgh and  
Town of New Windsor,  
Orange County, New York**

April 2002



Prepared by:

***The Chazen Companies***

*Capital District Office:*  
20 Gurley Avenue  
Troy, NY 12182

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229B Page Park, Manchester Road  
Poughkeepsie, NY 12603

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Newburgh, NY 12550

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Figure 1: Site Location Map

Figure 2: Site Sketch

## APPENDICES

APPENDIX A: Site Visit Photographs

APPENDIX B: Environmental Database Report

## 1.0 EXECUTIVE SUMMARY

The Chazen Companies have completed a Phase I Environmental Site Assessment of the Former Diamond Candle property, located north of John Street in the Town of New Windsor and north of the Quassaick Creek in the City of Newburgh, Orange County, New York. For the purposes of this report, the subject site is known as the TCC-34 parcel.

The subject properties contain approximately 8.28 acres of wooded land that is bisected by the Quassaick Creek. The subject property is currently vacant, however, the ruins of at least one building remain. There was substantial evidence of other demolished or abandoned structures including a chimney, foundations, drains and others remain on the subject parcel.

Based on the investigation performed, The Chazen Companies has identified recognized environmental conditions (as defined in ASTM E 1527-00) associated with the subject site property. The recognized environmental conditions are identified as follows:

- The historical use of the subject property by paper and woolen mills included the use of dyes and other chemicals as part of operations. These industrial users of the subject property date back to the 18<sup>th</sup> and 19<sup>th</sup> centuries. The chemicals, processes and business practices used by the historic industries have the potential to have impacted subsurface soil and groundwater quality. No direct evidence of discharges were observed but given the age and history of the facility, this is not unexpected.
- Coal ash and slag was identified at many locations around the subject property. The southern bank of the Quassaick Creek west of the Route 9W Bridge appears to be made up of a significant quantity of this material. This area rises approximately 50 feet from the Creek bed. The presence of ash and slag in these areas could result in elevated concentrations of organic compounds and heavy metals in the soil and or groundwater.
- Numerous pipes were observed that appear to be connected to the former factory locations. The pipes apparently discharged directly into the Quassaick Creek. There may have been numerous waste and or wastewater discharges when the facilities were operating. Impacts to the surface water and sediments of the Creek may have resulted from these discharges, particularly in areas of slack water and upstream of the dam locations.

- A number of piles of junk and miscellaneous debris litter the property. In the vicinity of the ruins and old foundations, there are piles of construction and demolition debris and, in areas accessible by the public, there has been a lot of convenience dumping. Discarded materials observed included tires, rims, refrigerators, wood, rusted drums, an automobile, scrap metal, old machinery, and construction. Inappropriate disposal of the aforementioned items could have had an impact to soil and or groundwater quality.

The following issues are not defined in ASTM E 1527-00 as recognized environmental conditions, but were identified during the course of this investigation as potential environmental concerns.

- There are ruins of the old buildings and foundations on the subject property. Many of these areas include subterranean openings and basements. The poor condition of the structures has resulted in hazardous safety situations at many locations on the subject property.
- Because of the age of the site structures it is possible that building materials could contain asbestos.
- Because of the age of the site structures it is possible that some of the painted surfaces may contain lead-based paint.

## 2.0 INTRODUCTION

In the Spring of 1998, businesses, governments, environmental and civic organizations came together to form the Mid-Hudson Land Revitalization Partnership (MHLRP). The mission of the MHLRP is to “contribute to the ongoing renaissance of the cities of the Mid-Hudson region by returning to productive use the abandoned or underutilized industrial or commercial properties with actual or perceived contamination”. In October of 1998, Ulster County, on behalf of the MHLRP, was awarded a grant from the U.S. Environmental Protection Agency (EPA) to study the redevelopment potential of properties in several cities belonging to the MHLRP. The MHLRP identified key properties or groups of properties in the Cities of Middletown, Newburgh, Poughkeepsie and Kingston that were candidates for environmental assessment based on redevelopment potential.

Mid-Hudson Pattern for Progress is a regional not for profit planning, research and public policy organization and has been instrumental in implementing the vision of the MHLRP. Pattern for Progress is the grant administrator for this project and in that capacity retained The Chazen Companies (TCC) to conduct Phase I Environmental Site Assessments (ESA's) at 83 properties identified by the MHLRP as having tremendous redevelopment potential. Pattern for Progress has provided oversight and assistance towards accomplishing the goals of the project. The mission of the MHLRP is to return to productive use, abandoned or underutilized commercial or industrial properties in the cities of the Mid-Hudson Valley that are perceived to be, or actually are, impacted by the historic use of the facility or surrounding properties.

The specific goal of the Phase I Environmental Site Assessment project was to evaluate the parcels individually and/or collectively for environmental liability. The purpose of the site assessment is to reasonably identify potential or known sources of hazardous waste, hazardous substances, and petroleum or chemical contamination, which may significantly impact the environmental quality of the site.

The site assessment included a site visit/observation, a review of existing documents and environmental lists, and background research on the previous uses and practices at the subject site as reported and documented by site contacts and Local, State, and County officials known to be responsible for regulating and enforcing site area environmental conditions. This site assessment has been performed in conformance with the scope and limitations as outlined in ASTM E 1527-00, Standard practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

This report presents the findings of a Phase I Environmental Site Assessment conducted at the Parcel TCC-34 Site (former Diamond Candle property), located in the City of Newburgh, Orange County, New York.

### 3.0 SITE DESCRIPTION

#### 3.1 Site Location

The former Diamond Candle Factory property, as it is commonly known, (TCC-34) is located north of John Street in the Town of New Windsor and north of the Quassaick Creek in the City of Newburgh , Orange County, New York, as indicated in Figure 1. The subject property is vacant and access to the subject parcel is limited. The subject property is described in the City of Newburgh tax records as Section 43, Block 1, Lots 28 and 29.2, Section 47, Block 2, Lot 10.2, and in the Town of New Windsor tax record as Section 9, Block 1, Lot 68.2.

<b>Tax Parcel Number (SBL)</b>	<b>Address</b>	<b>Acreage</b>
47-2-10.2	Newburgh	1.7
43-1-28	Newburgh	0.63
43-1-29.2	Newburgh	0.85
9-1-68.2	New Windsor	5.1

#### 3.2 Property/Business Owner

The parcels on the north side of the Quassaick Creek that make up the portion of the subject property located within the City of Newburgh are owned by the City of Newburgh. The parcel located on the south side of the Creek in the Town of New Windsor is owned by Orange County.

#### 3.3 Current Site Uses

The subject property is currently vacant, although it is apparent that people use the area for loitering. Evidence that children play in and around the Quassaick Creek was also observed. Dense vegetation and rubble (concrete, bricks, pipes, ect.) are located throughout the site. Photographs of the subject property are included in Appendix A.

### **3.4 Total Site Area and Topographic Description**

The subject property is an 8.28-acre land parcel located on both sides of the Quassaick Creek. According to the United States Geological Survey Topographic Map Quadrangle for Cornwall, New York, the elevation of the streambed of the Quassaick Creek ranges from 20 feet above mean sea level (msl) at the eastern edge and 80 feet msl at the western end. Land surface elevations on either side of the creek rise to approximately 60 to 80 feet msl at the eastern edge of the property to 100 to 120 feet msl at the west end of the property.

### **3.5 Site Geology**

Bedrock in the area has been mapped as Paleozoic aged rocks of the Trenton Group and Metamorphic equivalents consisting of undifferentiated carbonate rocks adjacent to a tectonic thrust fault located to the west of the subject property. The Orange County Soil Conservation Survey (OCSCS) lists three soil series as being present on the subject property. These soils are described as Mardin gravelly silt loam (MdB), Mardin gravelly silt loam (MdD), and Hoosic gravelly sandy loam (HoB).

MdB soils are described as deep, moderately well drained, gently sloping soil formed in glacial till deposits derived from sandstone, shale, and slate. Buildings, streets, and other impervious structures predominantly cover the Mardin soils at the subject site and in the surrounding area. MdD soils are described as deep, moderately well drained, moderately steep sloping soil formed in glacial till deposits derived from sandstone, shale, and slate. The soil is poorly suited to most urban uses because of slope, seasonal wetness, and slow permeability. HoB soils are described as deep, somewhat excessively drained, sloping soil formed in glacial outwash deposits that have a high content of sand and gravel. Pollution of the water table by septic effluent is a hazard because of the very rapidly permeable soil conditions.

### **3.6 Roadways or Driveways on or Adjoining the Site**

Bridges carry Mill Street and State Route 9W over the subject property. There are no functioning roads that provide direct access to the property, however, there is one driveway that enables access to the parcel from the Town of New Windsor from John Street. This driveway is apparently a paved entrance to the former Diamond Candle facility. The driveway is overgrown and apparently has not been accessed in years. The driveway is also on an easement through an adjacent property. There is another abandoned drive that runs west from the Candle Factory driveway. This former roadway extends to the west end of the property along the southern portion of the subject site.

### 3.7 Site Building(s) and Structure(s)

Evidence of a number of former structures (ie: foundations, brick, blocks, iron pipe) was observed on the subject property. Most of the remains of the structures are on the south side of the Quassaick Creek, although a few of the ruins are located north of the Creek.

There is an abandoned structure located on the south side of the Creek just east of the Route 9W overpass on the western portion of the subject site. This building is a wooden structure observed to be in extremely poor condition with a collapsing roof. Within the building are a number of pressure tanks. The use of the building or the pressure tanks is not known and could not be determined from the evidence on hand.

A second structure located east of the south end of the Mill Street Bridge was identified. This structure consists of the remains of a foundation and retaining wall. Within the foundation were 2 tanks whose use was not readily apparent. Immediately under the Mill Street Bridge overpass is a large cooling tower that may have been related to this structure or the former Diamond Candle Factory operations. Also under the Bridge is a garage building in which a number of empty drums in poor condition were found.

The remains of two structures located south of the Creek and east of the Mill Street Bridge was also identified. These structures consist of a chimney and the remains of what was the Diamond Candle Factory. Concrete debris, bricks, a variety of iron piping, and subsurface structures are located throughout the area of the former Candle Factory.

At the eastern end of the property is the foundation of a small building on the north side of the Creek. Within this old foundation were bricks and at least several inches of ash.

Other structures on the property included a small brick arched bridge in poor condition and a dam across the Quassaick Creek at the eastern end of the property. A small concrete building just east of the dam on the south side of the creek appears to be related to a water delivery conduit to a location downstream of the subject property. Many portions of the Creek are lined with retaining walls constructed of stone, boulders, or concrete. The remnants of 2 additional dams on the property are located in the Creek between the Mill Street and Route 9W Bridges and east of the Mill Street Bridge.

### 3.7.1 Heating/Cooling Systems

There are no active cooling or heating systems located on the subject property. A large cooling unit was identified west of the former Candle Factory under the Route 9W overpass on the south side of the Quassaick Creek.

### 3.8 Rights-of-Way and/or Easements (On-site and Adjacent)

Two easements are known to exist on the subject property. A 20-foot wide drainage easement is located across the northeast portion of the property to the Quassaick Creek. There is a 100-foot wide easement across the property for the Route 9W Bridge.

The southern portion of the abandoned driveway to the Diamond Candle Factory facility from John Street is an easement for ingress and egress to the subject site that crosses the adjacent property. The adjacent property to the south is currently occupied by Torr Industries.

### 3.9 Surrounding Land Uses

The surrounding land uses, as identified during the site visit, are described for the site property lots as follows:

- North – A vacant wooded parcel of land is located north of the eastern portion of the subject property. Abandoned railroad tracks owned by the CSX Corporation are located to the north of the subject property west of Mill Street.
- South – American Felt and Filter is located to the south of the east end of the subject property. Torr Industries and residential properties are located to the south of the remainder of the subject property.
- West – The Federal Block Corporation and the Cornwall Paper Mill ruins/property are located to the west of the property.
- East – American Felt and Filter and the abandoned rail property owned by the CSX Corporation are located to the east of the subject property.

## **4.0 SITE AND SURROUNDING AREA HISTORIC REVIEW**

### **4.1 Historic Land Use**

#### **4.1.1 Subject Property**

The subject parcel has a long history of industrial activity that dates back to the late 1700's and early 1800's. Historically, the Quassaick Creek corridor was the site of numerous industrial facilities located along the Creek to take advantage of the water for power and use in manufacturing. The industries on the subject property predominantly included paper mills, woolen mills, and a candle factory. With the exception of the numerous foundations and ruins observed on the property, none of these industrial facilities remain.

#### **4.1.2 Adjoining Properties**

Properties surrounding the subject parcel historically were also occupied paper and woolen mill operations. The properties to the south in New Windsor have been a mix of industrial, commercial, and residential uses. American Felt and Filter has been located to the southeast of the subject property. Railroad tracks have been located on the adjacent property to the north since the 1800's.

### **4.2 Title Search Information**

According to the Orange County Real Property Tax Office, the City of Newburgh has owned 2 of the parcels that make up the subject property (Section 47, Block 2, Lot 10.2 and Section 43, Block 1, Lot 29.2) since 1997. Prior to this, the Twin Bridge Group, Inc. had purchased the properties in 1994. Candle Properties, Inc., formerly Diamond Candle Co. Inc., had owned the properties since 1987. Prior to Diamond Candle, Salvatore Schismo had owned the property since 1956. Newburgh Bleachery owned the property between 1914 and 1956.

The County Tax Office records indicate that the City of Newburgh has owned Section 43, Block 1, Lot 28 since 1995. Prior to Newburgh, P&T Realty had purchased the property in 1993 from Hilmar Kusmierz, who had purchased it 1991 from H.C. Boiler Works. H.C. Boiler Works had purchased the parcel in 1987 from Cornwall Paper Mills. Cornwall Paper Mills purchased the property in 1974 from San Giacomo Paper Co. who had purchased the property in 1971 from Ross Paper Machinery. Prior to Ross Paper, National Gypsum Co. had owned the property since 1941.

The remaining portion of the subject property, Section 9, Block 1, Lot 68.2 located in the Town of New Windsor is documented in the Orange County Real Property Tax Office as being owned by Orange County since 1998. The parcel was purchased from Twin Bridge Group, Inc. who had purchased it in 1994. Candle Properties, Inc., (Diamond Candle) had owned the properties since 1987. Prior to Diamond Candle, Salvatore Schismo had owned the property since 1956. Newburgh Bleachery owned the property between 1914 and 1956.

### **4.3 Sanborn Fire Insurance Map Review**

Environmental Data Resources Inc provided Sanborn Fire Insurance Maps, providing coverage of the subject site for the years 1884, 1890, 1913, 1957, and 1965. Copies of the Sanborn Maps are attached to Appendix B.

The 1884 Sanborn Map indicates that there were two woolen mills on the New Windsor parcel east of the Mill Street Bridge. The mills, Windsor Woolen Mill (at the location of the Diamond Candle Factory) and Valley Woolen Mill, each included a large main building and several smaller satellite buildings. Several buildings are identified as being used for dyeing. The map shows a dam that is no longer present and the small bridge that was observed during the site inspection crossing the Quassaick Creek. This dam provided water to the Valley Woolen Mill. The 1884 Sanborn map indicates that water from the Creek was diverted to both of the Mill's main buildings. Three buildings are also shown to be present in the vicinity of the bridge on the north side of the Creek. One of the buildings is identified as storage. The use of the others could not be determined. There are no indications of ASTs or USTs located on the property.

The 1890 Sanborn Map indicates that the Windsor Woolen Mill had burned down in December 1889. According to the Map, the building was expected to be rebuilt. Several of the surrounding buildings located to the ruins of the Windsor Woolen Mills are shown to be vacant. The former Valley Woolen Mill, which was located to the east of the Windsor mill is identified as Saxony Woolen Mills in 1890 Sanborn Map. Five structures on the south side and one structure on the north side of the Creek are identified as dwellings.

The 1913 map indicates that the Saxony Woolen Mill is no longer there and it is shown as ruins. The dam that had supplied the Saxony Woolen Mill with water had also been removed by 1913. However, the 1913 map indicates that a mill labeled as the Hudson River Woolen Mills occupied the location previously occupied by the Windsor Woolen Mill facility. The map indicates that a coal-burning furnace heated the building. Hudson River Woolen Mills is shown to have 6 additional structures west of the Mill Street Bridge that are mostly identified as warehouse space. A dam supplying water to the Hudson River Woolen Mill is shown in the vicinity of

these structures. The dwellings on the south side of the Quassaick Creek identified shown in 1890 are no longer present. While the dwelling on the north side of the Creek was still present, the storage building is shown to be in ruins. New to the site is the Holden Paper Company Paper Mill is shown on the adjacent property to the west.

The 1957 Sanborn Map identifies the former Hudson River Woolen Mills facility as being occupied by the Diamond Candle Company. Changes to the factory indicate additions had been constructed since 1913. The map identifies a machine shop and boiler room within the facility. The map indicates that the boiler burned coal. The Route 9W bridge is present on the 1957 Sanborn and the buildings are also identified as part of Diamond Candle. The Holden Paper Company mill to the west is now identified as the National Gypsum Company Paper Mill. The dwelling on the property shown in the 1913 map on the north side of the Creek is no longer shown on the map.

With the exception of the removal of the dam between the Mill Street and Route 9W Bridges, the 1965 Sanborn Map shows no changes to the subject parcel or adjacent properties. None of the buildings identified in any of the Sanborn Maps remains today other than remnants.

#### **4.4 Area Photograph Review**

Aerial photographs of the subject site for the years 1964 and 1990 were reviewed at the Orange County Planning Department in Goshen, New York.

The 1964 aerial photograph depicts the property with a building that appears to be the Diamond Candle Company structure depicted on the 1965 Sanborn Map. This Diamond Candle building is not present in the 1990 aerial photograph. The remainder of the property appears vacant in both of the photographs.

#### **4.5 Information From Current or Former Property Owner(s)**

No information has been provided from the current and former property owners.

#### **4.6 Information From Other Sources**

Information on the historic industrial use of the property presented in Section 4.1 was obtained from the map of “Quassaick Creek Historic Industries” (Orange County Water Authority) provided by the Newburgh City Engineers Office. No other information has been provided from other sources.

#### **4.7 Previous Environmental Investigations**

No previous environmental investigations were identified.

## 5.0 REGULATORY AGENCY RECORDS REVIEW

### 5.1 Environmental ASTM Database Review (Federal/State)

ASTM standard and referenced databases were searched for the subject site and the subject site area, according to the ASTM E 1527-00 recommended distances for each database. Database search information was provided to The Chazen Companies by Environmental Data Resources, Inc. (EDR). A copy of the EDR report is provided in Appendix B. The Federal and State databases searched and the search radius for each database are presented in the table below:

Database	Radius Search (miles)
National Priorities List (NPL) Hazardous Waste Sites	1.0
Proposed NPL Sites	1.0
CERCLIS Hazardous Waste Site	0.5
CERCLIS No Further Remedial Action Planned (CERC-NFRAP)	0.25
RCRA Corrective Action Treatment, Storage And Disposal Facilities List (Corracts TSD)	1.0
RCRA Non-Corrective Action Treatment, Storage And Disposal Facilities List (Non-Corracts TSD)	0.5
RCRIS Hazardous Waste Generator List	Site and adjoining properties
Emergency Response And Notification System List (ERNS)	Site
NYSDEC Inactive Hazardous Waste Site List	1.0
NYSDEC Spills List, including Leaking Underground Storage Tank (LUST) incidents	0.5
NYSDEC Registered Underground Storage Tank (UST) Listing	Site and adjoining properties
NYSDEC Solid Waste Disposal Facilities List	0.5

Databases and search distances per ASTM E 1527-00 Standard Practice for Environmental Site Assessments

### 5.1.1 Listed Hazardous Waste Sites

The subject site was not identified (listed) as a NPL, Proposed NPL, CERCLIS CERC-NFRAP, or New York State Department of Environmental Conservation (NYSDEC) Hazardous Waste site. No NPL, Proposed NPL, or NYSDEC Inactive Hazardous Waste sites were identified within 1-mile of the subject site. No CERC-NFRAP sites were identified within a 0.25-mile radius of the subject site.

The Provan Transport Corporation is identified as a CERCLIS Hazardous Waste site located within a 0.5-mile radius of the subject site. The site is identified as a hazardous waste transporter

American Felt and Filter is identified on the NYSDEC Inactive Hazardous Waste database as a State Hazardous Waste Site (SHWS). This property is within 1-mile of the subject property. The database indicates that the soil, groundwater, and the Quassaick Creek are contaminated with 1,1,1-trichloroethane from the American Felt and Filter site. American Felt and Filter has entered into a consent order with NYSDEC to remediate the site. While the American Felt and Filter facility is on the adjacent property to the east, it is likely to be downgradient of the subject property and not likely to have a direct impact on it.

### 5.1.2 ERNS Listing Report

The subject site was not identified on the Emergency Response Notification System (ERNS) listing report. The ERNS listing is a federal database of EPA emergency response actions.

### 5.1.3 Petroleum and Chemical Spill Information

The NYSDEC Spills database was reviewed to determine if spill incidents have occurred on the site property, on adjoining sites or within 0.5-mile of the subject site. The subject site was not identified on the NYSDEC Spills database. None of the adjoining properties were identified on the NSYDEC Spills database.

Based on a review of the environmental spills database, 25 NYSDEC documented spill incidents were listed as having occurred within a 0.5-mile radius of the subject site. Three of these spill incidents were identified as having occurred within approximately 0.10-miles from the subject site. Details pertaining to the NYSDEC documented spills within a 0.10-mile radius of the subject site are summarized as Table 1. The remaining spills are described in the EDR Report presented in Appendix B.

Table 1: NYSDEC Spill Incidents Within 0.10-Mile From The Subject Site

Spill Site	Spill Date	Distance & Direction From Site	Quantities & Materials Spilled	Status
Lease Realtors 35 John St.	3/30/97	<1/8 mile south southwest	Unknown quantity of No. 2 fuel oil.	Closed
Roadway 106 John St.	7/14/95	<1/8 mile west	0.25-gallons of non-PCB oil from electrical transformer.	Closed
Windsor Mech. Mill St. Bridge	12/6/89	<1/8 mile north	Unknown quantity of gasoline in sewer.	Closed

#### 5.1.4 Registered Underground Storage Tank (UST) Listing

The subject site was not identified on the NYSDEC registered underground storage tanks (UST) database. No adjoining properties were identified on the UST database.

The subject site was not identified as a Leaking Underground Storage Tank (LUST) facility. No adjoining properties were identified as LUST facilities. Based on a review of the environmental database, 6 were identified as leaking tank (LTANK) sites within a 0.5-mile radius of the subject site. Two of the LTANK sites listed in the database report are identified as LUST sites.

#### 5.1.5 RCRA Listing Reports

The subject site was not identified as a Resource Conservation and Recovery Act (RCRA) hazardous waste generator. No adjoining parcels were identified as RCRA generator sites. A review of the list of RCRA large quantity generators (LQGs) revealed that there are 2 LQGs within approximately 0.25-mile of the site property. The site was not identified as a RCRA treatment, storage and disposal (TSD) facility. No TSD facilities were identified within 0.5-mile of the subject site. The site was not identified as a RCRA Corrective Action (RCRA Corraacts) site. No RCRA Corraacts sites were identified within 1-mile of the subject site.

#### 5.1.6 Registered New York State Solid Waste Facilities

The subject site was not identified as a registered NYS Solid Waste Facility (landfill). No NYS Solid Waste Facilities were identified within a 0.5-mile radius of the subject site.

### 5.1.7 Related Environmental Violations, Warnings and Fines

No environmental violations, warnings or fines were identified for the subject site.

### 5.2 Information From Health Department Official(s)

The Orange County Department of Health (DOH) was contacted for information pertaining to soil quality, groundwater quality and any environmental investigations performed on the subject site. In response to the FOIL request, the OCDOH informed TCC that there are two inactive hazardous waste sites in the vicinity of the subject parcel. Each of these locations is approximately 0.25 miles downgradient of the subject parcel. No other information was available regarding the subject parcel.

### 5.3 Information From Town and/or County Official(s)

City of Newburgh and Town of New Windsor Officials were contacted for information pertaining to the subject site. Information provided by the City of Newburgh Office of Assessment, Clerks Office, and the Office of the City Engineer is presented in Sections 3.0, 4.1, and 4.2 of this report. No additional information was available.

### 5.4 Information From Local Historian

The City of Newburgh Historian, Kevin Barrett, was contacted for historical records pertaining to the subject site. No information has been provided as of yet.

## **6.0 SITE VISIT**

### **6.1 Conditions of Visit**

#### **6.1.1 Site Contact(s)**

The City of Newburgh provided access to the subject site.

#### **6.1.2 Date of Visit**

The subject site was visited on September 6, 2001 by Mr. Richard Calogero and Mr. Scott Schmidt of The Chazen Companies. A second visit was conducted September 18, 2001 by Mr. Calogero and Mr. David Tompkins of The Chazen Companies.

#### **6.1.3 General Weather Condition**

On both days, the skies were clear with and an ambient air temperature of approximately 80°F.

#### **6.1.4 Ground Cover**

The site is vacant, wooded, and covered by heavy vegetation. In several areas there are remnants of foundations, bricks, rubble, and iron works associated with former industrial buildings. The Quassaick Creek flows through the center of the subject parcels.

#### **6.1.5 Areas Observed**

Much of the subject property is densely vegetated with poison ivy and multiflora rose making access quite difficult. As much of the subject site was observed during the site inspection as possible.

### **6.2 Uses of Site Buildings and Structures**

The site is vacant and the remaining structures, slabs, and foundations are in poor condition and may represent significant safety hazards.

### **6.3 Site Utilities**

No gas or electric service was observed on the subject parcel. There is no municipal water or sanitary sewer service on the site since the property is vacant; however, municipal utilities are available in the vicinity oil of the Candle Factory.

#### **6.4 Hazardous Substances Associated with Identified Uses**

No hazardous substances are currently used on the subject property. The property had a history of woolen, paper, and candle industry use for over 150 years, and hazardous substances associated with these uses may have been utilized on the subject property. Several abandoned and rusted drums and tanks were observed at various locations on the subject property. All appeared to be empty.

#### **6.5 Raw Product Drums/Containers**

Several old rusted drums/tanks/vessels identified on the subject property on the south side of the Quassaick Creek.

#### **6.6 Waste Product Drums/Containers**

Several old rusted drums/tanks/vessels identified on the subject property on the south side of the Quassaick Creek.

#### **6.7 Transformers/Capacitors (Liquid Filled Only)**

No Transformers were observed on the subject parcel.

#### **6.8 Petroleum and Chemical Storage Tanks**

Two tank-like structures were observed west of the Mill Street Bridge on the south side of the subject property adjacent to an old foundation. Three pressure vessels are located within the ruins of the wooden building beneath the east side of the Route 9W Bridge. A 2,000-gallon steel tank was found among debris and rubble below the east side of the Route 9W Bridge. Based on observations made during the site visit it did not appear that the tank contains anything at the present time.

#### **6.9 Site Subsurface and/or Water Well Data**

No wells are located on the subject property. No subsurface or water well data was identified for the subject site.

#### **6.10 Site Surface Water Bodies/Areas**

The Quassaick Creek flows west to east through the subject parcel and drains approximately 0.5 mile to the east to the Hudson River.

## **6.11 Nearby Surface Water Bodies and Water Supply Wells**

The Hudson River is located approximately 0.5 mile east of the subject site. There are no municipal water supply wells located near subject site. No potable water wells were identified on the subject site.

## **6.12 Site Drainage**

### **6.12.1 Site Catch Basins and Discharge Location(s)**

No catch basins were observed on the subject property. Numerous discharge pipes were observed along the Quassaick Creek that are related to the former industrial facilities on the site. No information was available regarding the pipes.

### **6.12.2 Building Floor Drains and Discharge Location(s)**

No floor drains were observed within the remains of any of the abandoned structures. A number of discharge pipe locations, as well as water pipes and sluices, were observed along the Quassaick Creek. Most of the ruins and piping associated with them are located on the south side of the Creek.

### **6.12.3 Dry Wells and Sumps**

No dry wells or sumps were observed during the site walk. Basement areas of the building ruins on the south side of the Creek could not be inspected due to safety concerns.

### **6.12.4 Site Septic Systems**

The City of Newburgh services the area with a municipal sanitary sewer system. No septic systems are known to exist on the site.

## **6.13 Site Waste Profile**

### **6.13.1 Solid Wastes/General Trash (Generation/Storage/Disposal)**

No solid waste or trash is currently generated at the subject site. Trash and debris was observed at a number of locations on both sides of the Quassaick Creek, as well as in the Creek itself. Much of the trash and debris appears to have been washed down stream or thrown from the bridges that cross over the site. The ruins of the structures on the property, and a large pile of wax emanating from a drainage pipe beneath it are all solid waste. Much of the property is littered with rusted equipment, rubble, steel, an automobile, and other debris associated with convenience dumping, particularly from the tops of slopes on both sides of the Creek.

Substantial quantities of ash and slag were observed on the property. Much of the steep bank of the Quassaick Creek west of the Route 9W Bridge seems to be made up of coal ash and slag. It appears that this material was the result of on-site disposal of this material.

#### 6.13.2 Sludge (Generation/Storage/Disposal)

There are no sludge generation, storage, and disposal activities located on the subject parcel.

#### 6.13.3 Liquids (Generation/Storage/Disposal)

There are no liquids currently generated, stored, or disposed of on the subject property. Based on the presence of the discharge pipes observed along the Quassaick Creek throughout the site, it appears likely that the Creek received historical discharges along its course.

#### 6.13.4 Wastewater Discharges

Wastewater is not currently discharged from this property at this time. Based on the presence of the discharge pipes observed along the Quassaick Creek throughout the site, it appears likely that the Creek received historical discharges along its course.

#### 6.13.5 Waste Lagoons or Disposal Pits (Current and Historic)

No waste lagoons or disposal pits were observed on the subject property.

## **7.0 POTENTIAL OR KNOWN SITE CONTAMINATION**

### **7.1 Evidence of Soil Contamination**

No direct evidence of soil contamination such as discolored soil or stressed vegetation was observed during the site inspection, although a thorough inspection of the site was limited due to terrain and dense vegetation. However, ash and slag were observed in a number of locations, including on the south bank of the Quassaick Creek west of the Route 9W Bridge and within the ruins of a foundation on the north side of the Creek, indicating that surface disposal did occur on the property.

### **7.2 Evidence of Liquid Discharges**

Historical evidence of liquid discharges was observed on the property during the site visit based on the presence of discharge pipes at numerous locations along the Quassaick Creek. Due to the historical use of the property by paper and woolen mills, the potential exists for subsurface soil and groundwater contamination from historical discharges of dye's and other chemical wastes.

### **7.3 Evidence of Soil or Surface Disturbances**

The ground surface in many areas contains large amounts of ash and slag. Indications are that disposal of this material occurred while the mills operating on the subject property burned coal. Other areas where soil disturbance was observed during the site inspection included ruins and debris associated with the former structures.

### **7.4 Evidence of Waste Deposits (Piles/Pits/Landfills/Lagoons)**

As noted previously, ash and slag was found in a number of locations on the property including a large quantity that appears to make up much of the south bank of the Quassaick Creek west of the Route 9W Bridge. Convenience dumping has occurred in a number of areas where access by the public, particularly where vehicles could be brought close to the edge of a steep embankment. Discarded materials observed included tires, rims, appliances, wood, scrap metal, old machinery, and construction debris appeared to be the result of convenience dumping and is not related to the historical industrial activities on the property.

## **7.5 Evidence of Underground or Above Ground Storage Tanks**

Two tank-like structures were observed west of the Mill Street Bridge on the south side of the subject property adjacent to an old foundation. Three pressure vessels are located within the ruins of the wooden building beneath the east side of the Route 9W Bridge on the south side of the Quassaick Creek. The remains of a 2,000-gallon tank were observed in the ruins of the Diamond Candle Factory. Piping in the debris around the smoke stack adjacent to the location of the Diamond Candle boiler room may be related to a tank.

## **7.6 Evidence of Asbestos Containing Materials (ACM)**

No evidence of asbestos containing materials was observed during the site inspection. Based on the age of the ruins of the buildings on the subject property, there is the potential for building materials to contain asbestos. An ACM survey was not performed as a function of this Phase I Environmental Site Assessment.

## **7.7 Radon**

According to the Screening Results Short Term Data Report (NYSDOH, December 1999), the average indoor radon air concentration in the City of Newburgh is 5.5-pico curies/Liter (pCi/L) of air. This concentration is based on a survey of 251 residential basements in the City of Newburgh.

Based on a review of the US Environmental Protection Agency (USEPA) Radon Map of New York, Orange County is mapped as a Zone 1 area, indicating that properties located within Orange County have a high potential for indoor air radon concentrations to be 4.0 pCi/L or greater. The EPA has set an indoor air radon action level of 4.0 pCi/L for residential dwellings. Radon testing would be necessary to determine actual radon levels in site buildings. Radon testing was not performed as a function of this assessment.

## **7.8 Lead Based Paint/Lead In Drinking Water**

Because of the age of the structures around the subject property, the potential exists that painted surfaces may contain lead based paint. There are no drinking water sources on the subject property.

## 8.0 SUMMARY AND CONCLUSIONS

The Chazen Companies have completed a Phase I Environmental Site Assessment at the TCC Parcel 34 Site (former Diamond Candle Company property), located in the City of Newburgh and the Town of New Windsor, Orange County, New York.

The site is an abandoned parcel that encompasses 8.28-acres straddling the City of Newburgh and Town of New Windsor border. The subject property is bisected by the Quassaick Creek and has a history of at least 150 years of industrial use, including numerous paper and woolen mills. The foundations and ruins of many of these structures are located throughout the property, along with discarded equipment and debris from these facilities. Numerous pipes along the Creek indicate historical discharges from the former factories.

Based on the investigation performed, The Chazen Companies has identified recognized environmental conditions (as defined in ASTM E 1527-00) associated with the subject property. The following recognized environmental conditions might exist on the property.

The historical use of the subject property by paper and woolen mills included the use of dyes and other chemicals as part of operations. These industrial users of the subject property date back to the 18<sup>th</sup> and 19<sup>th</sup> centuries. The chemicals, processes, and business practices used by the historic industries have the potential to have impacted subsurface soil and groundwater quality. No direct evidence of discharges were observed but given the age and history of the facility, this is not unexpected.

Coal ash and slag was identified at many locations around the subject property. The southern bank of the Quassaick Creek west of the Route 9W Bridge appears to be made up of a significant quantity of this material. This area rises approximately 50 feet from the Creek bed. The presence of ash and slag in these areas could result in elevated concentrations of organic compounds and heavy metals in the soil and or groundwater.

Numerous pipes were observed that appear to be connected to the former factory locations. The pipes apparently discharged directly into the Quassaick Creek. There may have been numerous waste and or wastewater discharges when the facilities were operating. Impacts to the surface water and sediments of the Creek may have resulted from these discharges, particularly in areas of slack water and upstream of the dam locations.

A number of piles of junk and miscellaneous debris litter the property. In the vicinity of the ruins and old foundations, there are piles of construction and

demolition debris and, in areas accessible by the public, there has been a lot of convenience dumping. Discarded materials observed included tires, rims, refrigerators, wood, rusted drums, an automobile, scrap metal, old machinery, and construction. Inappropriate disposal of the aforementioned items could have had an impact to soil and or groundwater quality.

The following issues are not defined in ASTM E 1527-00 as recognized environmental conditions, but were identified during the course of this investigation as potential environmental concerns.

There are ruins of the old buildings and foundations on the subject property. Many of these areas include subterranean openings and basements. The poor condition of the structures has resulted in hazardous safety situations at many locations on the subject property.

Because of the age of the site structures it is possible that building materials could contain asbestos and some of the painted surfaces may contain lead-based paint.

The information presented in this report is limited to the investigation conducted and described, and is not necessarily all inclusive of conditions present at the subject site.

If you have any questions regarding this report, please contact The Chazen Companies, Newburgh, New York office at (845) 567-1133.

## **LIST OF PEOPLE AND AGENCIES CONTACTED**

1. New York State Department of Environmental Conservation
2. New York State Department of Health
3. Orange County Department of Health
4. Mr. David Barrett – City of Newburgh Historian
5. Ms. Elizabeth McKeon – City of Newburgh, Engineering Aid
6. Ms. Sharon Hyder – City of Newburgh Properties Manager
7. Town Clerks Office – Town of New Windsor

## **DOCUMENTS REVIEWED**

1. Aerial Photographs for the years: 1964 and 1990 were reviewed at the Orange County Planning Department.
2. Department of Labor, Mines Master Index File. August 1998.
3. EPA CERCLA Information System Sites Detail Report. March 2001.
4. EPA Federal Superfund Liens. October 1991.
5. EPA PCB Activity Database System. December 2000.
6. EPA CERCLIS-NFRAPA No Further Remedial Action Planned, March 2001.
7. EPA RCRA Administrative Action Tracking System. April 1995.
8. EPA Toxic Chemical Release Inventory System. December 1998.
9. EPA Toxic Substance Control Act. December 1998.
10. EPA FIFRA/TSCA Tracking System. Office of Prevention, Pesticides and Toxic Substances, Federal Insecticides, Fungicide, and Rodenticide Act. August 2000.
11. EPA Corrective Action Report. April 2000.
12. EPA National Priority List Deletions. January 2001.
13. EPA Emergency Response Notifications Listing Report. August 2000.
14. EPA Facility Index System/Facility Identification Initiative Program Summary Report. July 2000.
15. EPA RCRA Hazardous Waste Registration Listing Report. June 2000.
16. EPA RCRA Corrective Action Listing Report. June 2000.
17. EPA Resource Conservation and Recovery Information System. June 2000.

**DOCUMENTS REVIEWED  
(continued)**

18. EPA National Priority List Sites. January 2001.
19. EPA/NTIS Biennial Reporting System. December 1997.
20. Fire Insurance Maps from the Sanborn Map Company Archives. Late 19<sup>th</sup> Century to 1990: New York University Publications of America. Bethesda, Maryland, provided by Environmental Data Resources, Inc.
21. NTIS Record of Decision. September 1999.
22. New York Active Solid Waste Facilities Listing Report. December 1999.
23. New York State Department of Environmental Conservation List of Registered Underground Storage Tanks. January 2001.
24. New York State Department of Environmental Conservation Region 3 List of active and closed spill files. List covering spills and LUST incidents through January 2001.
25. New York State Department of Environmental Conservation, Division of Hazardous Waste Remediation Quarterly Status Report of Inactive Hazardous Waste Disposal Sites. January 2001.
26. New York State Department of Environmental Conservation, Division of Hazardous Waste Remediation "Inactive Hazardous Waste Disposal Sites in New York State, " Region 3. April 2001.
27. New York State Department of Environmental Conservation, Facility Register. December 2000.
28. New York State Department of Environmental Conservation, Chemical Bulk Storage. January 2001.
29. New York State Department of Environmental Conservation, Major Oil Storage Facilities. January 2001.

**DOCUMENTS REVIEWED  
(continued)**

30. New York State Department of Environmental Conservation, Voluntary Cleanup Agreements. March 2001.
31. Nuclear Regulatory Commission. Material Licensing Commission, January 2001.
32. Quassaick Creek Historic Industries. Orange County Water Authority.
33. Geologic Map of New York State, Hudson Mohawk Sheet. 1970, revised to 1995.
34. Surficial Geologic Map of New York State, Hudson Mohawk Sheet, 1987.
35. US Department of Transportation Hazardous Materials Information Reporting System. November 2000.
36. New York State Department of Health, Basement Screening Results By County, Short Term Data, NYSDOH Radon Program. December 1999.

## Figures

**Figure 1**  
**Site Location Map**

**Figure 2**  
**Site Layout Map**

## **APPENDIX A**

### **Site Visit Photographs**

## **APPENDIX B**

### **Environmental Database Report**

## **SCHEDULE A**

### **SCOPE OF WORK**

As per grant award from New York State Energy Research and Development Authority (NYSERDA), Orange County plans to implement the Mid-Hudson Regional Sustainability Plan recommendations at the local government level, using the County, the Village and Town of Warwick, and the City of Newburgh as leading examples. With assistance from staff of the Orange County Department of Planning, the Regional Plan Association, and the US Green Building Council, the City of Newburgh will complete draft and final comprehensive plan amendments or related policy documents, draft and final code – notably zoning code - and policy amendments for same, and environmental assessments forms for the same, as well as conduct relevant public information meetings or hearings and advance adoption of acceptable plans, codes and policy amendments by the municipality. The City of Newburgh will be reimbursed for relevant staff time and/or expenses consistent with all terms of the Agreement including this Schedule A and B. The scope of work for this contract covers:

Task 1 – Contract Management

Task 2 - Mid-Hudson Sustainability and Smart Growth Resource Kit Development

Task 3 - Audit Existing Policies, Plans, Regulations and Documents for Conformance with Best Practices to Achieve Smart Growth and Sustainability

Task 4 – Draft Updated Documents and Procedures

Task 5 – Outreach and Education

Task 6 – Adoption

Invoices can be submitted to the Orange County Planning Department based upon projects identified in Schedule B. The percentage of each task completed should be identified and the payments will be prorated to that percentage.

The Agreement shall include the following document which is attached and incorporated by reference as Exhibit A:

Agreement Number 39522 issued by New York State Energy Research and Development Authority (NYSERDA) (Grantor) for the Cleaner, Greener Communities (CGC) Program, Phase II: Category 2 – Orange County Updates to Municipal Comprehensive Plans and Best Practices Guidance CFA#28315

Vendor shall comply with all terms and conditions, including those incorporated directly or by reference, into Exhibit A, as may be amended by the Grantor and/or amendments, statutes, regulations or agency guidelines applicable through Exhibit A.

In the event of any conflict or inconsistency between the Agreement itself and any requirement in Exhibit A, the conflict shall be resolved by giving precedence to the requirement of Exhibit A over the Agreement.



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December 2, 2014

Kelly Dobbins, AICP  
Senior Planner/Project Manager  
Orange County Planning Dept/OCWA  
124 Main St  
Goshen, NY 10924  
sent via email [kdobbins@orangecountygov.com](mailto:kdobbins@orangecountygov.com)

*Re: Proposal for Professional Services – Brownfields Cleanup Program Eligibility Investigation  
Quassaick Creek Project, City of Newburgh and Town of New Windsor, New York  
Chazen Proposal # PM14-116*

Dear Ms. Dobbins,

The Chazen Companies (Chazen) thank you for the opportunity to provide you this proposal for professional services to conduct a Brownfields Cleanup Program (BCP) eligibility investigation at the above-referenced site. We have helped numerous clients get accepted into the program, and successfully navigate through the BCP to closure. Chazen's 2001 Phase I Environmental Site Assessment (ESA) and related proposal identified areas for additional investigation based on client goals at the time. We have revised our proposal specifically to meet your current goal to determine whether the site is eligible for the NYSDEC Brownfields Cleanup Program (BCP). Our scope and fee are presented below.

**Recommended BCP Eligibility Investigation Scope**

We have focused on soil data collection, for the most diagnostic information, with a few groundwater samples. Sediment sampling is not included, as it likely contains material from upstream locations, and off-site sources are not sufficient for a site to be considered eligible for the program. We note that NYSDEC may request additional sampling, and that site conditions may have changed since 2001 that may warrant additional investigation. We recommend that a pre-application meeting be attended with NYSDEC, to get NYSDEC input on likelihood of eligibility and discuss the proposed sampling approach at that time.

Our selected laboratory is a Minority Business Enterprise (MBE/WBE).

***Task 1 – Test Pit Investigation***

A test pit program will use an excavator to install up to 15 test pits to characterize the nature of site soil and fill material. Test pits will be dug down to native soil or bedrock refusal, or the limits of the

excavator reach, whichever comes first. A Chazen geologist will physically characterize the soil and fill material encountered, observe for visual and olfactory evidence of contamination, and screen soils for volatile organic compounds (VOCs) using a photoionization detector (PID). Test pit logs will be prepared for each test pit, and locations documented using Global Positioning System (GPS).

Up to 10 representative samples of soil or fill material will be collected for laboratory analysis. Samples will be analyzed for target compound list (TCL) VOCs via EPA method 8260, TCL semi-volatile organic compounds (SVOCs) via EPA method 8270, RCRA Metals via EPA Methods 6010 and 7471, and polychlorinated biphenyls (PCBs) via EPA method 8082. Quality control (QC) samples will include one field duplicate, up to four field blanks (one per day), and one matrix spike/matrix spike (MS/MSD). An ASP-B data package will be provided by the laboratory.

Our budget estimate includes up to three days for this effort, although it could be less. This task assumes that the areas are accessible and do not require extensive clearing of vegetation, debris, or snow.

While this task will help characterize the nature of site soil and fill material, it is not expected to delineate the extent of impacts, if they are identified.

### ***Task 2 –Groundwater Investigation***

As a preliminary investigation of groundwater quality on the site, four temporary groundwater sampling points (TGSPs) will be located between the Route 9 and Mill Street bridges, with two on each side of the Quassaick Creek. The locations will be finalized after the test pit investigation is complete, and adjusted to areas of identified contamination, if encountered.

A Geoprobe direct push rig will be used to install the TGSPs and a Chazen geologist will physically characterize the soil during TGSP installation and observe for visual and olfactory evidence of contamination, and screen soils for VOCs using a PID. Boring/well construction logs will be prepared for each location.

Grab groundwater samples will be collected from the three TGSPs and analyzed for TCL VOCs, TCL SVOCs, RCRA Metals, and PCBs. QC samples will include one field duplicate, one field blank (one per day), one trip blank, and one MS/MSD. An ASP-B data package will be provided by the laboratory.

Chazen estimates that this effort can be completed within one day, and assumes that the TGSP locations are accessible without needing to be cleared of vegetation, debris, or snow, and that groundwater is present in overburden. The TGSP locations will be documented using GPS.

### ***Task 3 –Reporting***

Following completion of field work and receipt of laboratory data, a summary report will be prepared to document the investigation findings. Documentation will summarize field activities and it will be ready within three weeks of receipt of laboratory data. The report will include sample data, test pit/boring/well construction logs, sample location maps, and descriptions of the Site conditions. If necessary, recommendations for additional investigations and/or site remedial actions will be presented

as a separate document. An electronic copy of the report will be submitted in portable digital format (pdf).

Our approach is to gather data useful at this eligibility determination stage and that can also be incorporated into later reports.

As a separate task, Chazen can prepare a pre-application BCP worksheet for the site and attend a pre-application meeting with you and NYSDEC.

#### **Assumptions and Limitations**

This proposal includes the cost for only those specific services delineated above. Additional items not addressed as part of this proposal include:

- The preparation of supplemental or additional reports or correspondence which may be requested or required by you, your representatives or consultants, or governmental agencies, including a work plan/field sampling plan, health and safety plan (HASP), quality assurance project plan (QAPP), community air monitoring program (CAMP), a data usability summary report (DUSR), Remedial Investigation Report, or Remedial Action Work Plan.
- Costs associated with any delays in getting access to site test pitting or drilling locations.
- Disposal of investigation-derived wastes or impacted soil.
- Site restoration beyond refilling test boring holes with soil or gravel.
- Excavating or drilling in conditions more difficult than those stated/anticipated.
- Prior to subsurface testing, our excavation and drilling subcontractors will ensure that the New York Underground Facilities Protection Organization (UFPO) has been contacted and underground utilities marked out on public lands adjacent to the Site, as warranted under New York State law. However, the public UFPO process does not include on-site buried utility mark-outs. If you are uncertain about the locations of any on-site underground utilities in the proposed investigation areas, Chazen recommends that a private on-site utility markout also be conducted. Chazen can provide costs for a private utility locator at an additional cost, if requested. If no on-site utility mark-out is completed, Chazen cannot be held responsible or assume any liability for damage, harm or costs associated with any penetration or disturbing of features or utilities contacted as a result of our investigation.

We will work diligently to complete the project within the budget and schedule. The above investigation is intended to be reasonably comprehensive and the cost estimate is based on the scope of work and schedule described herein. Circumstances, including actual site geologic conditions, may arise that are outside of our control so additional days or samples may be required.

#### **Client Responsibilities**

- It is the responsibility of the client to obtain permission for Chazen and its subcontractors to access the property to conduct this work. The client is responsible for identifying subsurface utilities within the investigation areas.
- If conditions are encountered that require notification of a petroleum spill to an appropriate regulatory agency, the Site owner and any knowledgeable party will be obligated to report the release under existing New York State law. If reporting is required, Chazen will notify you

immediately to discuss the findings, consequences and time requirements for reporting. Reporting of an identified petroleum release is required within two hours of discovery in the State of New York, and Chazen may be obligated to report a spill if identified during drilling.

**Professional Services Fee Schedule**

Chazen proposes to bill each task as indicated in the following Fee and Time Schedule Summary. Invoices will be issued monthly for all services performed during that month, and are payable upon receipt. Time and Materials tasks will be billed based on the actual hours and reimbursable expenses incurred, at the rates listed in our current Fee Schedule. Fees listed for Time and Materials tasks are estimates only. Chazen will make its best effort to complete each of these tasks within the estimated amounts; however, it is possible that it will be necessary to exceed these amounts in order to complete the scope of services for each task. The proposed schedule is shown and is contingent on obtaining timely access all areas of the site for inspection.

**Fee and Time Schedule Summary**

Tasks		Fee Estimates		Proposed Schedules
Task No.	Task Description	Time and Materials Estimate <sup>(1)</sup>	Sub-Consultant Estimate <sup>(1)</sup>	Projected Start / End Dates <sup>(2)</sup>
1	<b>Test Pit Investigation</b> Up to 3 days, 15 test pits, 10 soil samples, QC samples	\$3,450	\$5,555 excavator \$5,025 lab	Start: Week 1-2 (weather pending) End: Week 3-4
2	<b>Groundwater Investigation</b> One day, 4 TGSPs, 4 groundwater samples, QC samples	\$1,320	\$2,570 driller \$2,510 lab	Start: Week 2-3 End: Week 3-5
4	<b>Reporting</b>	\$5,750 Lump Sum		Start: Following receipt of lab reports End: 2 to 3 weeks
<b>Subtotal</b>		\$10,520	\$15,660	
<b>TOTAL</b>		<b>\$26,180</b>		

<sup>1</sup> Chazen will bill for actual hours spent on the task and reimbursable expenses occurred, but not beyond the not-to-exceed limit that is agreed upon at the start of the work without authorization from the Client. An estimate of services is provided here for planning purposes.

<sup>2</sup> Projected start and end dates are subject to change and are based on date from authorization to proceed and receipt of all information that we require to perform our work. Because certain aspects of the project are outside of Chazen's control, Chazen cannot guarantee completion of the project within these proposed schedules. If any deviation is required, Chazen will immediately notify you of the condition and our revised schedule for your review.

**Agreement**

Receipt of the attached Standard Agreement with your signature will be our authorization to schedule the performance of this work. Please be aware that the projected task start and completion dates are based upon a timely receipt of the signed proposal. A delay in returning the necessary documents may

require modification of the proposed task start and completion dates as described herein. This proposal is valid for 30 days.

Please feel free to contact me at (518) 266-7328 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Arlette St. Roman". The signature is fluid and cursive, with the first name "Arlette" being more prominent than the last name "St. Roman".

Arlette St. Roman  
Director, Environmental Services

cc: Chazen Distribution List

**AGREEMENT MADE** this \_\_\_\_\_ day of \_\_\_\_\_ 2014 by and between Chazen Engineering, Land Surveying & Landscape Architecture Co., D.P.C. (CELSLA) or Chazen Environmental Services, Inc. (CES), each existing under the laws of the State of New York, with their principal places of business at 21 Fox Street, Poughkeepsie, New York 12601 (hereafter referred to collectively as "Chazen" ) and Orange County Planning Dept/OCWA, 124 Main Street, Goshen, NY 10924 (hereafter referred to as "Client").

1. **PURPOSE:** Client hereby retains Chazen to perform the services described in the Proposal For Professional Services dated December 2, 2014 which is hereby made a part of this Agreement.

2. **COMPENSATION:** Chazen's compensation for services shall be as stated in the Proposal For Professional Services. Chazen shall submit invoices on or about the tenth day of each month. Invoices shall be payable upon receipt. Invoices not paid within 30 days will be assessed a finance charge of 1.5% per month. At the beginning of each calendar year Chazen reserves the right to adjust its billing rates in accordance with Chazen's new annual fee schedule. Chazen may suspend its performance under this Agreement until all delinquent amounts due for services and expenses have been paid. All amounts due and owed Chazen under this Agreement shall be paid in full at the completion of services. Chazen may refuse to release reports, maps and materials prepared by Chazen for Client until all arrearages are paid in full. If Chazen is required to retain an attorney and/or collection agency to collect amounts due Chazen under this Agreement, Client agrees to pay Chazen's reasonable attorney's and/or collection fees together with the costs and disbursements of any such action.

**A retainer in the amount of \$\_\_\_\_\_ will be required prior to the initiation of services. This retainer will be held until the end of the project and applied to Client's final invoice. Any excess amount will be returned to Client.**

**Final payment will be due upon delivery of the final work product (e.g. report, survey, etc.).**

3. **COOPERATION:** Client agrees to keep Chazen informed of changes to the project scope and schedule, and shall arrange for and provide Chazen entry to property in order to perform the services. Client shall give Chazen prompt notice of any potentially hazardous or injurious conditions Client knows of or has reason to know of which may be present on property Chazen must enter. Client agrees to allow Chazen to display appropriate promotional signage during construction, and to allow Chazen to make a photographic record of the project prior to, during, and subsequent to construction. Client agrees to allow Chazen to use photographic images, along with information about the project and/or a description of the services provided, for promotional purposes without restriction or monetary compensation.

4. **PROJECT DOCUMENTS:**

- A. All Documents which may include, but are not limited to, Plans, Specifications, Survey Plats, Technical Reports and Correspondence are instruments of service with respect to this Project, and Chazen shall retain an ownership and property interest therein, including the right to reuse the Documents. The right to alter the Documents belongs only to Chazen.
- B. Client and Client's contractors or other consultants may rely only upon printed copies (also known as hard copies) of Documents that are signed and sealed by a Licensed Professional employed by Chazen. If there is any discrepancy between printed copies and any electronic copies, the most recent version of the printed and certified copies govern.
- C. Any electronic copies (files) provided will be provided solely as a convenience and shall NOT be considered "Contract Documents," "Construction Documents" or any type of certified document. All documents considered "Contract Documents," "Construction Documents" or any type of certified document shall consist only of printed copies having an original signature and seal of a Licensed Professional employed by Chazen.
- D. Be advised that electronic copies of Documents can deteriorate or be inadvertently modified without Chazen's consent, or may be otherwise corrupted or defective. Accordingly, Client and Client's contractors or other consultants may not rely upon the accuracy of any electronic copies of Documents.

- E. Any use, conclusion or information obtained or derived from electronic copies of Documents by Client or Client's contractors or other consultants will be at Client's sole risk and without liability to Chazen. Client shall defend, indemnify, and hold harmless Chazen and its officers, directors, representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including attorneys' fees) arising from any use whatsoever or reliance on electronic copies of Documents.
- F. Client understands that Documents are not intended or represented to be suitable for any purpose other than that for which they were created. Any reuse or modification of Documents by Client or Client's contractors or other consultants will be at Client's sole risk and without liability to Chazen. Client shall defend, indemnify, and hold harmless Chazen and its officers, directors, representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including attorneys' fees) arising from any reuse or modification of Documents.
- G. Client understands that it is a violation of New York State Education Law for any person to alter in any way any Document that has been signed and sealed by a Professional Engineer or Land Surveyor, unless he or she is acting under the direction of a licensed Professional Engineer or Land Surveyor and that the altering professional signs and seals the document and describes the alteration.

5. **INDEMNITY & LIMITATION OF LIABILITY:** Client and Chazen have discussed the risks, rewards and benefits of the project and Chazen's fees for services under this Agreement. Client and Chazen have also discussed the allocation of risk associated with their respective duties under this Agreement and agree, to the fullest extent permitted by law:

- A. Chazen shall carry and maintain Workers Compensation, General Liability, Automobile Liability and Professional Liability insurance. Chazen will provide Client certificates of insurance upon request. Chazen agrees to indemnify Client against loss caused by the negligent actions of Chazen, and the employees and subcontractors of Chazen, within the terms and conditions of the insurance coverage maintained by Chazen, subject to the limitation of liability set forth in paragraph 5(C) below. Chazen will not be responsible for any loss or liability, or any violation of law, rule, regulation or decree by Client or the employees, agents, contractors, or consultants of Client.
- B. Chazen agrees that it will not bring hazardous or toxic materials onto Client's property. Client understands that the ordinary course of work performed by Chazen may result in the excavation and relocation of hazardous or toxic materials that were on or under the property before Chazen began its work. Client understands that Client is solely responsible for the cost of investigating, removing, and remediating such materials.
- C. Chazen's liability for claims related to professional services errors or omissions under this Agreement, however arising, shall be limited to the lesser of \$1,000,000 or the total compensation received by Chazen from Client, and Client hereby releases Chazen from any liability or contribution above such amount. This limitation of liability shall include but not be limited to Chazen's negligence, errors, or omissions. In no event shall Chazen be liable for incidental or consequential damages, including loss of profits or revenue resulting from any cause or causes.

6. **TERMINATION:** In the event of substantial failure by either party to perform under this Agreement, the aggrieved party may terminate this Agreement upon seven (7) days written notice. If this Agreement is terminated, Client shall remit all monies due Chazen within 30 days. Chazen at its sole discretion, may terminate this Agreement when it reasonably believes there may be condition(s) which threaten the health and safety of Chazen personnel and subcontractors. Chazen assumes no duty to report hazardous or dangerous conditions not caused by Chazen and shall rely exclusively upon Client to report any such conditions.

7. **SEVERABILITY:** If any provision of this Agreement is held invalid such provision shall have no effect, but all remaining provisions shall continue in full force and effect. Each provision of this Agreement shall be interpreted so as to render it valid.

8. **NOTICES:** All notices shall be in writing and shall be sufficient if sent by first class mail or overnight mail to the addresses of Client and Chazen as shown herein. Notices shall be deemed as received three (3) business days after mailing. Each party hereby agrees to accept all mailed and hand delivered communications.

- 9. **ENTIRE AGREEMENT:** This Agreement and any attachments and exhibits identified herein represent all of the promises, agreements, conditions, understandings, and undertakings between Client and Chazen.
  
- p10. **AMENDMENTS:** This Agreement shall bind Client and Chazen and their successors and assigns. The parties may, by written agreement(s), modify and amend this Agreement. Any such amendment must be in writing and be signed by the party against whom enforcement of the amendment is sought. No breach of any part of this Agreement shall be deemed waived unless expressly waived in writing by the party who might assert such a breach. The failure of any party to insist in any one or more instances upon strict performance of this Agreement shall not be construed as a waiver of the right to insist upon strict performance.
  
- 11. **GOVERNING LAW:** This Agreement shall be governed and construed by the laws of the State of New York. For purposes of any legal action or suit related to or arising out of this Agreement venue shall be Dutchess County, New York.
  
- 12. **COUNTERPARTS:** This Agreement, and any amendments or revisions thereto, may be executed in two or more counterparts each of which shall be deemed an original, but which together shall constitute one and the same instrument(s).
  
- 13. **REPRESENTATIONS:** Client and Chazen state that each has full power and authority to make, execute and perform this Agreement. Signatory for Client states that he is an officer, owner, partner, agent or attorney for Client. Neither Client nor Chazen is bankrupt or have availed themselves of any debtor's remedies nor are currently contemplating such.

CLIENT \_\_\_\_\_

THE CHAZEN COMPANIES

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO.: 306 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR VENDOR SERVICES WITH THE COUNTY OF ORANGE AFFIRMING THE CITY OF NEWBURGH'S COMMITMENT TO ACTIVELY PARTICIPATE AS A LOCAL GOVERNMENT ENTITY IN THE NYSERDA CLEANER, GREENER COMMUNITIES (CGC) PROGRAM, PHASE II: CATEGORY 2 GRANT, WHICH HAS BEEN AWARDED TO THE COUNTY OF ORANGE**

WHEREAS, by Resolution No.: 49-2013 of February 25, 2013, the City Council of the City of Newburgh acknowledged its participation in the Mid-Hudson Regional Sustainability Plan and endorsement of vision and implementation strategies of this Plan as prepared for Cleaner, Greener Communities Program of the New York State Energy Research and Development Authority (NYSERDA); and

WHEREAS, such grant for this Plan has been awarded to the County of Orange; and

WHEREAS, the City of Newburgh has been named a participating local government agency, which requires the execution of an agreement for vendor services for the activities associated with such grant; and

WHEREAS, this Council has reviewed the attached agreement and has determined that entering into such agreement is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh hereby authorizes the City Manager to execute an Agreement for Vendor Services with the County of Orange affirming the City of Newburgh's commitment to actively participate as a local government entity in the NYSERDA Cleaner, Greener Communities (CGC) Program, Phase II: Category 2 Grant, which has been awarded to the County of Orange; and

BE IT FURTHER RESOLVED, that the Council of the City of Newburgh hereby accepts the terms and conditions of the Grant and authorizes acceptance of all reimbursement funds and in-kind services; and that the City Manager is further authorized to execute all necessary documents to receive and comply with the terms of such grant and to carry out the program funded thereby.

LOCAL LAW NO.: \_\_\_\_\_ - 2014

OF

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A LOCAL LAW AMENDING SECTION C3.00 ENTITLED “MUNICIPAL OFFICERS  
ENUMERATED” AND ADDING SECTION C3.12  
ENTITLED “RESIDENCY REQUIREMENTS”  
OF THE CODE OF THE CITY OF NEWBURGH

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

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law Amending Section C3.00 entitled ‘Municipal Officers Enumerated’ and adding Section C3.12 entitled ‘Residency Requirements’ of the Code of the City of Newburgh”.

**SECTION 2 - AMENDMENT**

**§ C 3.00, Paragraph C of the City Charter is hereby amended as follows:**

The officers of the city or municipality shall be as follows:

C. One Corporation Counsel, one City Comptroller, one City Assessor, one City Collector, one City Purchasing Agent, one City Engineer, one Superintendent of Public Works, one Superintendent of Water, one Police Chief, one Fire Chief, one Building Inspector, one Plumbing Inspector, one Registrar of Vital Statistics, one Deputy Registrar of Vital Statistics, one Planning and Development Director and one Parks and Recreation Director.

**Article III of the City Charter of the City of Newburgh, entitled “Municipal Officers” is hereby amended to add new Section C3.12 entitled “Residency Requirements” as follows:**

- A. Purpose. The City Council of the City of Newburgh finds that individuals who are officers and department heads of the City of Newburgh take a greater interest, commitment and involvement in the municipality that employs them by living within that community. The City Council further finds that in order to protect the health safety and welfare of the citizens of the City where emergencies and emergency work arise, it is necessary that the officers and department heads reside in the City. Accordingly, the City Council determines that there is a sufficient public need to require that officers and department heads initially appointed and hired after the effective date of this Section be residents of the City of Newburgh.

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Underlining denotes additions

B. Application. This section shall apply to the officers of the City of Newburgh enumerated in Subsection C3.00(B) and (C) of this Article and the City Marshal and Acting City Marshal initially appointed after January 1, 2015. This section shall not supersede or override any other residency provision existing in state or federal law or existing in the City Charter and Code of Ordinances of the City of Newburgh found to be contrary to the provisions herein. City Charter Section C3.00(D) is hereby repealed by this local law.

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

OFFICER - includes the City Manager, three Civil Service Commissioners, the City Clerk, the members of the Traffic and Parking Advisory Committee, the Corporation Counsel, the City Comptroller, the City Assessor, the City Collector, the City Purchasing Agent, the City Engineer, the Superintendent of Public Works, the Superintendent of Water, the Police Chief, the Fire Chief, the Building Inspector, the Plumbing Inspector, the Registrar of Vital Statistics, the Deputy Registrar of Vital Statistics, the Parks, one Planning and Development Director and Recreation Director as enumerated in City Charter Section C3.00(B) and (C) initially appointed and hired by the City of Newburgh after January 1, 2015 and the City Marshal and Acting City Marshal initially appointed after January 1, 2015

RESIDENCY - a person's usual and customary place of abode where the individual lives and regularly stays, the place where the family of any person permanently resides and the place where any person having no family generally lodges

D. Residency for new officers. Every person initially appointed as an officer of the City of Newburgh on or after January 1, 2015 shall as a qualification of employment by the City of Newburgh be a resident of the City of Newburgh at the time of initial appointment or become a resident within 90 days of appointment and shall remain a resident of the City of Newburgh as a condition of continued appointment and employment. Except as hereinafter provided, any officer of the City of Newburgh who does not comply with the residency requirements of this Section shall be deemed to have voluntarily resigned.

E. Verification and documentation.

1. The City Council shall be responsible for verifying the compliance with this residency requirement for the City Manager, Civil Service Commissioners, City Clerk and members of the Traffic and Parking Advisory Committee. The City Manager shall be responsible for verifying the compliance with this residency requirement for the remaining officers, except for the City Marshal and Acting City Marshal. The City Court shall be responsible for

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Underlining denotes additions

verifying compliance with this residency requirement for the City Marshal and Acting City Marshal.

2. All relevant sources of verification or documentation must be considered in determining an officer's residence. Where the officer's family permanently resides is a significant factor in determining the officer's residence. The following sources of verification or documentation also should be considered:

Voter's registration  
Driver's license  
Motor vehicle registration  
Utility bills and receipts  
Deed  
Tax bills and receipts  
Contract for sale  
Lease or rental agreement  
Landlord's affidavit  
Insurance policies  
Visual verification

F. Waiver. In the event that the provisions of Subsection D of this Section will prevent the City from filling the officer positions, one sixty (60) day extension may be granted as follows:

1. By the City Council for the Civil Service Commissioners, the City Clerk and the Traffic and Parking Advisory Committee members;
2. By the City Manager for the remaining officers, except for the City Marshal and Acting City Marshal; and
3. By the City Court for the City Marshal and Acting City Marshal.

G. Exceptions

1. Notwithstanding any provisions of this Section to the contrary, any person holding an officer position of the City as of December 31, 2014 and who was not a resident of the City as of that date, shall not be required to comply with the requirements of this Section.
2. Nothing herein shall change the residency requirement for any elected City official.
3. Nothing herein shall change the residency requirement of the City Manager as provided in City Charter Section C5.00(C).

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Underlining denotes additions

Draft dated 12/3/14

### SECTION 3 - VALIDITY

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

### SECTION 4 - EFFECTIVE DATE

This Local Law shall take effect on January 1, 2015 after it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

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~~Strikethrough~~ denote deletions

Underlining denotes additions

Draft dated 12/3/14

## EXECUTIVE SUMMARY

Here is a brief history of the property/casualty insurance program, so that the people viewing this proposal have a sense of where the program has been.

For the January 1, 2003 insurance renewal, we started to see the effects of the hard insurance market and the handful of recent large claims in the City. The effects were an increase in the Self-Insurance layer and a significant premium increase.

For the January 1, 2004 insurance renewal, we faced the same items as mentioned above, possible litigation between the City and one of the excess insurance carriers and non-renewal of the Liability Coverage due to claim history. After an extensive search through the marketplace, we were successful in negotiating an excess insurance program with one carrier, Essex Insurance Company at what was truly, terrific premiums when you looked at the loss history!!! In a study we completed, over the past ten years, the City had paid the primary insurance carrier, in relative terms, \$1.00 in premium and collected, or will collect \$2.00 in claim payments, on average. There are not many, if any, businesses that would last with this type of ratio.

The January 1, 2005 presented a new twist as the Essex Insurance Company decided to exit the municipal insurance market and issued a non-renewal notice. After an extensive search we negotiated the best terms, conditions and pricing with Illinois Union Insurance Company. Negotiating a relatively flat premium renewal took a combination of knowing the marketplace and knowing the underwriters from past personal experience based on this difficult loss/claim history.

For 2006, we again marketed the Liability Insurance Program. The marketplace is stabilizing due to a large infusion of capital into the Bermuda Insurance Market and the effects of Katrina have not yet been seen. Our marketing efforts have been hugely successful in negotiating a:

- 31% Decrease in Liability Premium!
- Increasing Liability Limits by \$2,000,000!

In Year 2007, the Property and Liability program had been negotiated to less than a 3% increase! Due to some claim issues in the Workers' Compensation area, specifically claims settlement issues, the retentions have increased. In marketing this coverage we were successful in negotiating lower retentions but at a higher cost. We looked at options. The market overall was expected to remain flat or possible decrease in the next year or two.

And for the 2008 renewal, the insurance market was in a softening phase. We went to various markets and presented options. The overall renewal to the city was successful, achieving a 2% decrease.

For the January 1, 2009 renewal we marketed the program to U.S. Specialty, One Beacon, Star Insurance Co. Praetorian and Safety National Insurance Company.

Our negotiations resulted in another great program renewal for the City with an overall 10% premium savings.

And for January 2010 we are once again successful in our negotiations. If we elect to continue with our same carrier of the last 3 years, we will obtain a 9% premium reduction. Or, if we elect to renew with the optional quote from U.S. Specialty, the premium reduction is 16%!

In 2011 the insurance was put out for an RFP by the City's Insurance Consultant Philip Platzer and a number of broker/agents were involved. Our proposal came in with a 9% premium reduction and also an option for lower Self-Insured retention for Liability coverage.

Terms and conditions remain the same for the January 1, 2012 insurance renewal. The overall cost of the City of Newburgh increased 1.5%.

In a meeting with the City on August 23, 2012 it was decided to remarket the entire insurance program for the January 1, 2013 renewal. We approached U.S. Specialty, Praetorian, Travelers, Brit Insurance, C.V. Starr, Chartis, NY Municipal Insurance Reciprocal, XL Insurance and others. The premium remained flat.

In a meeting with City representatives on September 19<sup>th</sup> it was decided to negotiate with our current carriers on the January 1, 2014 renewal. This decision was based upon the fact that the City went through an RFP process four years ago and I went to the marketplace for multiple quotes for the 2013 insurance renewal.

Praetorian, the City's property insurance carrier withdrew from the New York/New Jersey market due to the incurred losses from Sandy. This carrier has provided coverage to the City at very, very competitive rates for many years. It has been a difficult task replacing them.

The overall 2014 renewal is very good with the exception of the property where there are options to be reviewed and decided upon.

**COMMUNITY WORKFORCE AGREEMENT**

BETWEEN

CITY OF NEWBURGH, NEW YORK

AND

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

LOCAL NO. 17

**DRAFT**

## ARTICLE 1

### SECTION 1. RECITALS

For several decades the City of Newburgh and The Hudson Valley Building and Construction Trades Council and specifically The Laborers' International Union of North America, Local 17, an affiliate of the Council have attempted to create work opportunity in construction for those residents of the City of Newburgh.

Laborers' Local 17 have partnered over the years with the City of Newburgh and related organizations to train City of Newburgh residents in construction, specifically in but not limited to safety, environmental remediation and demolition. Although there has been some success, the success has been limited for various reasons mainly due to the fact that the majority of public financed construction is awarded to the lowest bidder, many times out area contractors, with no requirement to hire local labor or City of Newburgh residents.

Through this Community Workforce Agreement, it shall help foster the following goals:

- Develop programs that will train City of Newburgh residents in the construction field and create full time job opportunities with the Laborers' International Union (LIUNA) Local 17.
- Create a pathway into good paying union jobs.
- Properly train and educate City of Newburgh residents in asbestos, lead and demolition.
- Create a safe workplace.
- Establish a livable wage.
- Ensure jobs for City of Newburgh residents
- Ensure minorities, women and veterans job opportunities.
- Entice and promote other Building Trade Unions to participate in similar programs to create union opportunities in other trades such as carpenters, plumbers, electricians, etc.
- Work jointly to secure grants and funding for additional training and job opportunity.
- Form a strong united partnership between LIUNA Local 17 and the City of Newburgh.
- Establish a labor advisory board.

This Community Workforce Agreement (hereinafter "CWA") is entered into on \_\_\_\_\_, 2014 by and between the City of Newburgh (hereinafter "City"), the City of Newburgh Landbank (hereinafter "Landbank") and Local 17 with respect to publicly financed asbestos, lead, hazardous waste or demolition projects let to bid or funded by the "City" or "Landbank" or other "City" agency. The "CWA" shall also be made available to privately funded projects in the "City". This Agreement establishes the labor relations policies and procedures for the City of Newburgh and City of Newburgh Landbank, contractors and subcontractors and the employees represented by "LIUNA" engaged in asbestos, lead, hazardous waste or demolition construction, reconstruction or rehab work.

It is understood by the parties to this Agreement that this Agreement is acceptable to the City of Newburgh, the City of Newburgh Landbank and LIUNA Local 17 as reflected on the Signature Page as signed by authorized representatives of the parties.

It will become policy of the City of Newburgh and the City of Newburgh Landbank that the construction work covered by this Agreement will be contracted exclusively and only to contractors and subcontractors, who through their execution of a Letter of Assent (Attachment A) will bind them to this Agreement.

The Unions and all signatory contractors agree to abide by the terms and conditions contained in this Agreement. This Agreement represents the complete understanding of the parties, and no contractor is or will be required to sign any other Agreement with a signatory union as a condition of performing work within the scope of this Agreement. No practice, understanding or agreement between a contractor and a union party which is not specifically set forth in this Agreement will be binding on any other party unless endorsed in writing by the Administrator.

The Unions agree that this Agreement will be made available to, and will fully apply to, any successful contractor for covered work who becomes a signatory hereto, without regard to whether that successful contractor performs work at other sites on either a union or a non-union basis, and without regard to whether employees of such contractor are or are not members of any union. This Agreement shall not apply to any work of any contractor performed on any other project or at any location other than as defined in this Agreement. The Unions hereby pledge to work cooperatively with all businesses awarded work, for example, trust or benefit payments that arose on non-covered work.

The use of masculine or feminine gender or titles in this Agreement shall be construed as including both genders and not as gender limitations, unless the Agreement clearly requires a different construction.

It is understood by parties to this Agreement that by written notice and agreement between parties that this Agreement may be extended for non-asbestos, lead, hazardous waste or demolition projects when work scope pertains to work covered under laborers jurisdiction.

It is not the intent of this Agreement to infringe on work of the other craft or trades.

Based on required laws or resolutions "City" and "Landbank", have approved the "CWA" Agreement and have directed that it be included in the CONTRACT DOCUMENTS for the Project, with the stipulation that all successful bidders, and all levels of subcontractors, together with their respective sureties, shall abide by the Agreement with respect to the performance of all work on the Project and that any failure to comply with the Agreement fully shall be considered a material breach of the contractor's agreement for the Project with the "City" and "Landbank", justifying, among other remedies, immediate termination of the contractor.

## SECTION 2: PARTIES TO THE AGREEMENT

This is a Community Workforce Agreement ("CWA") entered into by and between LIUNA Local 17, the City of Newburgh and the City of Newburgh Landbank for asbestos, lead, hazardous waste and demolition projects funded or let to bid by the "City" or "Landbank".

## ARTICLE II

### SECTION 1. DEFINITIONS

Throughout this Agreement, the Laborers' International Union of North America Local 17 are referred to singularly and collectively as "LIUNA 17", the term "CONTRACTOR(s)" shall include all prime Contractors, and their subcontractors of whatever tier engaged in construction work within the scope of this Agreement as defined in Article III; City of Newburgh is referenced as the "City", City of Newburgh Landbank is referred to as the "Landbank"; the Hudson Valley Building and Construction Trades Council is referenced as the "COUNCIL"; and the work covered by this Agreement (as defined in Article III) is referred to as the "PROJECTS".

### SECTION 2. CONDITIONS FOR AGREEMENT TO BECOME EFFECTIVE

This Agreement shall not become effective unless each of the following conditions are met; (1) the Agreement is signed by LIUNA 17 (2) the Agreement is signed by an authorized representative of the City and (3) the Agreement is signed by the "Landbank".

### SECTION 3. ENTITIES BOUND AND ADMINISTRATION OF AGREEMENT

This Agreement shall be binding to LIUNA 17 and all Contractors performing Project Construction work. The CONTRACTORS shall include in any subcontract that they let, for performance during the term of the Agreement, a requirement that subcontractors shall be bound by this Agreement with respect to subcontracted work performed within the scope of Article III.

### SECTION 4. SUPREMACY CLAUSE

This Agreement, together with the local Collective Bargaining Agreements appended hereto as Schedule A, the CONTRACT DOCUMENTS, represent the complete understanding of all signatories with respect to this Project, in whole or in part. Where a subject covered by the provisions, explicit or implicit, of this Agreement is also covered by Schedule A agreement or any other national agreement, local agreement or other collective bargaining agreement of any other type which would otherwise apply to this Project, the provisions of this Agreement shall prevail. It is further understood that no CONTRACTOR shall be required to sign any other labor agreement as a condition of performing work on this Project. No practice, understanding or agreement between a CONTRACTOR and a LIUNA 17, which is not explicitly set forth in this Agreement, shall be binding on this Project unless endorsed in writing by the "City" or "Landbank" authorized representative.

### SECTION 5. LIABILITY

Neither the "City" nor the "Landbank" shall be liable or have any responsibility or exposure to the LIUNA 17 and/or its constituent unions for any violations of this Agreement by a CONTRACTOR.

## SECTION 6. BID SPECIFICATIONS

The contracting agency shall require and provide in its CONTRACT DOCUMENTS for all work within the scope of Article III that all successful bidders, and their subcontractors, will be bound by the terms of this Agreement. It is understood that nothing in this Agreement shall be construed as limiting the sole discretion of the "City" or "Landbank" in determining which CONTRACTOR shall be awarded contracts for Project work. It is further understood that the "City" or "Landbank" has sole discretion at any time to terminate, delay or suspend the work, in whole or part, on this Project.

## SECTION 7. AVAILABILITY AND APPLICABILITY TO ALL SUCCESSFUL BIDDERS

This Agreement will be provided to all bidders and will fully apply to all successful bidders for the Project. This Agreement shall not apply to the work of any CONTRACTOR or any Subcontractors or Sub subcontractors which is performed at any location other than the Project site, as defined in Article III, Section 1 or to any work performed by employees of the "City" or "Landbank".

## SECTION 8. THIRD PARTIES PROVIDING ANCILLARY WORK

Persons engaged in work ancillary to the Project, performed by third parties such as gas and electric utilities, telephone operating companies, cable service providers. With respect to entities engaged in such work ancillary to the Project, the "City" or "Landbank" will nonetheless notify those entities of this Agreement and that they may participate under this Agreement, if they so choose. To the extent practicable, and within its control, the "City" or "Landbank" will use its best efforts to coordinate ancillary work within the vicinity of construction performed under this CWA to promote labor harmony on the Project.

## ARTICLE III

The Project work covered by this Agreement shall be defined and limited as follows:

### SECTION 1. THE WORK

The Community Workforce Agreement shall only apply to the following, asbestos, lead, hazardous waste and related work.

### SECTION 2. EXCLUDED WORKERS

Items specifically excluded from the scope of this Agreement include the following:

- a) work of employees of the "City" or "Landbank" and its consultants, including professional surveyors for design purposes, the CONSTRUCTION MANAGER and the design team, including persons employed as superintendents, supervisors, staff engineers, inspectors, quality assurance personnel, mail carriers, clerks, office workers, messengers, security personnel hired through a professional accredited service by the "City" or "Landbank" or its representatives, emergency medical and

first aid technicians, and other professional, architectural, engineering and administrative personnel.

- b) laboratory or specialty testing or inspections not ordinarily performed by the Unions;
- c) employees and entities engaged in off-site manufacturing, modifications, repair, maintenance, assembly, painting, handling or fabrication of components, materials, equipment or machinery or involved in deliveries to and from the project site, except local deliveries of all major construction materials including fill, ready mix, asphalt, granular materials and construction debris services which are covered by this agreement;

## ARTICLE IV UNION RECOGNITION AND EMPLOYMENT

### SECTION 1. PREHIRE RECOGNITION

LIUNA 17 shall be recognized by all CONTRACTORS on the Project as the sole and exclusive bargaining representatives for laborers who will be performing the Project work within the scope of this Agreement as defined.

### SECTION 2. UNION REFERRAL

- a) The CONTRACTORS, subcontractors and sub-subcontractors on the Project shall hire and utilize for the duration of the project, laborers who are referred through the job referral systems, hiring halls or related job placement practices established by LIUNA 17, the "City" and "Landbank". Notwithstanding this, the CONTRACTORS shall have sole right to determine the number of employees required, the selection of employees to be laid off (except as provided in this Agreement); and the sole right to reject any applicant referred, subject to the requirements set forth in the applicable Collective Bargaining Agreement annexed hereto as Schedule A, and the provisions of Section 2 (b) below.
- b) Minority, women and economically disadvantaged persons shall be afforded an opportunity for entry into the construction industry through the formal apprenticeship program of the Local Unions, where such programs are in place and registered. The CONTRACTORS on the Project shall not discriminate against such persons who are referred to them under Section 2 above.
- c) In the event the Local Union is unable to fill any request for qualified employees two working days after such request is made by the CONTRACTOR, the CONTRACTOR may employ qualified applicants from the City of Newburgh first, thereafter any available source. In the event that the Local Union does not have a job referral system, the CONTRACTOR shall give the Local Union first preference to refer applicants, subject to the other provisions of this Article. The CONTRACTOR shall notify the Local Union of Project, craft employees hired within its jurisdiction from any source other than referral by the Union.

- d) LIUNA 17 shall supply the foreman or supervisor, then hiring shall be 50/50 thereafter. The 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup>, and 9<sup>th</sup> shall be a LIUNA 17 member, the 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> shall be from the Community Workforce as established.
- e) Preference shall be given to LIUNA 17 members who reside in the City of Newburgh.

### SECTION 3. NON-DISCRIMINATION IN REFERRALS

The Local Unions represent that their hiring halls, referral systems and related job placement practices will be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations which require equal employment opportunities. Referral shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system, hiring hall or related job placement practice because of the applicant's union membership, or lack thereof.

### SECTION 4. MINORITY AND FEMALE REFERRALS

In the event a Local Union either fails, or is unable to refer qualified minority or female applicants in percentages equaling the Project affirmative action goals if any are set forth in the CONTRACT DOCUMENTS, the CONTRACTORS may employ qualified minority or female applications from any other available source, with preference to the City of Newburgh qualified residency.

### SECTION 5. CRAFT FORE PERSONS AND GENERAL FORE PERSONS

The selection of craft fore persons and/or general fore persons and the number of fore persons required shall be solely the responsibility of the CONTRACTOR, notwithstanding anything to the contrary in Schedule A. All fore persons shall take orders exclusively from the designated CONTRACTOR representatives. Craft fore persons shall be designated as working fore persons at the request of the CONTRACTOR, notwithstanding anything to the contrary in Schedule A.

### SECTION 6. LOCAL LABOR

To the extent consistent with applicable state and federal law including, but not limited to, competitive bidding statutes and without undermining the policies underlying such law, the parties support the recruitment of City of Newburgh workers, minorities and women, and City of Newburgh businesses. The contractor shall be required to furnish local laborers and local supplier/vendor reports monthly.

## ARTICLE V UNION REPRESENTATION

### SECTION 1. LOCAL UNION REPRESENTATIVE

Each Local Union representing on-site Project employees shall be entitled to send a representative who shall be afforded access to the Project provided that they do not interfere with the work of employees and further provided that such representatives fully comply with the visitor and security safety rules of the Project. Such designation shall be in writing which shall be provided to the CONTRACTOR(s) involved and the COUNTY.

### SECTION 2. STEWARDS

- a) LIUNA 17 shall have the right to designate a working journeyperson as a Steward. Stewards, etc., shall not exercise supervisory functions and will receive the rate of pay as per Schedule A.
- b) The Steward shall have the right to receive but not solicit complaints or grievances and to discuss and assist in their adjustment with the CONTRACTOR's appropriate supervisor. The CONTRACTOR(s) shall not discriminate against the Steward in the performance of their Union duties. The Stewards shall not have the right to determine when overtime shall be worked, or who shall work overtime except pursuant to a Schedule A provision providing procedures for the equitable distribution of overtime.

### SECTION 3. RESERVATION OF RIGHTS

Except as expressly limited by a specific provision of this Agreement and subject to anything otherwise expressly provided in the project contract and specifications, CONTRACTORS shall retain full and exclusive authority for the management of their Project operations including, but not limited to: the right to direct the work force, including determination as to the number of employees to be hired and the qualifications therefore; the promotion, transfer, layoff of its employees; or the discipline or discharge for just cause of its employees; the assignment and schedule of work; the promulgation of reasonable Project work rules; and the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices, which limit or restrict productivity or efficiency of the individual, and/or joint working efforts with other employees, as determined by the CONTRACTOR, shall be permitted or observed.

- a) If a Steward is protected against layoff or discharge by a Schedule A agreement, such provisions shall be recognized to the extent the Steward possesses the necessary qualifications to perform the work required. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the CONTRACTOR.

## **ARTICLE VI MANAGEMENT RIGHTS**

### **SECTION 1. MATERIALS, METHODS & EQUIPMENT**

There shall be no limitations or restriction upon the CONTRACTOR's choice of materials, techniques, methods, technology or design, or regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, or pre-finished materials, tools, or other labor-saving devices, provided that all permanent material and installation conform with the scope and quality described in the CONTRACT DOCUMENTS. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the CONTRACTOR.

## **ARTICLE VII WORK STOPPAGES AND LOCKOUTS**

### **SECTION 1. NO STRIKES, NO LOCKOUT, NO PICKETING**

There shall be no strikes, stoppages, slowdowns, picketing, walk-offs, or other disruptive activity at the Project for any reason by any Union or employee against any CONTRACTOR or employer while performing work at the Project. There shall be no other Union, or concerted or employee activity which disrupts or interferes with the operation of the Project. There shall be no lockout at the Project by any CONTRACTOR, CONTRACTORS and Unions shall take all steps necessary to ensure compliance with this Section.

### **SECTION 2. EXPEDITED ARBITRATION**

Any CONTRACTOR or Union alleging a violation of Section 1 of this Article may utilize the expedited procedure set forth below.

- a) A party invoking this procedure shall give notice in writing to an Arbitrator selected by the American Arbitration Association procedures or his designee who shall serve as an Arbitrator under this expedited arbitration procedure. In such event, the Arbitrator shall provide copies of the notice to the alleged violator, LIUNA 17 and either the "City" or "Landbank".
- b) In all cases where it is contended that a violation of Section 1 above, is ongoing and still exists, the Arbitrator shall promptly schedule and hold a hearing within 48 hours of the time of receipt of the notice (or as soon thereafter as is reasonably practicable).
- c) All notices pursuant to this Article shall be in writing and shall be served by hand or fax transmission and by overnight delivery, addressed to the Arbitrator, CONTRACTOR(s), "City" or "Landbank" or LIUNA 17 involved. The hearing may be held on any day, excluding Saturdays or Sundays. However, nothing herein shall require or compel the scheduling of a hearing on other than a working day of the

"City" or "Landbank". The hearing shall be completed in one session, which shall not exceed 8 hours in duration (no more than 4 hours being allowed to either side to present their case and conduct their cross examination) unless otherwise agreed. The failure of any Union or CONTRACTOR to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.

- d) The sole issue at the hearing shall be whether a violation of Section 1 above, occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Award, restraining such violation, and serve copies on the CONTRACTOR(s) and Unions involved. The Award shall be issued in writing within 3 hours after the close of the hearing and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days after receipt of a written demand for the same, but its issuance shall not delay compliance with, or enforcement of the Award.
- e) An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the Award Notice of the filing of such enforcement proceedings shall be given to the Union or CONTRACTOR involved. In any court proceeding to obtain a temporary or preliminary order enforcing the Arbitrator's Award as issued under this expedited procedure, the involved Union and CONTRACTOR waive their right to a hearing and agree that such proceedings may be ex parte, provided notice is given to opposing counsel. Such agreement does not waive any party's right to participate in a hearing for a final court order of enforcement or in any contempt proceeding.
- f) Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the CONTRACTORS and Unions to whom they accrue.
- g) Any fees and expenses of an Arbitrator shall be equally divided between the involved CONTRACTOR(s) and involved Union(s).

### SECTION 3. DISCHARGE FOR VIOLATION

A CONTRACTOR may discharge any employee violating Section 1, above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 days.

### SECTION 4. ARBITRATION OF DISCHARGES FOR VIOLATION

The grievance and arbitration procedures contained in Article IX shall not be applicable to any alleged violation of this Article, with the single exception that an employee discharged, for an alleged violation of Section 1, above, may have recourse to the procedures of Article IX to determine only if the employee did, in fact, violate the provisions of Section 1 of this Article, but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

**ARTICLE VIII  
LABOR MANAGEMENT COMMITTEE**

**SECTION 1. SUBJECTS**

A Labor Management Committee shall be established and shall consist of representatives of LIUNA, the CONTRACTOR, City of Newburgh and the City of Newburgh Landbank. The committee will meet on a regular basis to: (1) promote harmonious relations among the CONTRACTORS and unions; (2) enhance safety awareness, cost effectiveness and productivity of construction operations; (3) protect the public interests; (4) discuss matters relating to staffing and scheduling with safety and productivity as considerations; (5) review Affirmative Action and equal employment matters pertaining to the Project; (6) monitor and ensure timely completion; (7) assist in ensuring that a high degree of skill and quality of workmanship is attained in the performance of the Project; and (8) to evaluate and monitor the CWA.

**ARTICLE IX  
GRIEVANCE AND ARBITRATION PROCEDURE**

**SECTION 1. PROCEDURE FOR RESOLUTION OF GRIEVANCES**

Any question, dispute or claim arising out of, or involving the interpretation or application of this Agreement (other than jurisdictional disputes or alleged violations of Article VII, Section 1) shall be considered a grievance and shall be resolved pursuant to the exclusive procedure described below; provided, in all cases, that the question, dispute or claim must have arisen during the term of this Agreement.

**STEP 1:**

- a) When any employee covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the employee shall, through the Local Union Business representative of job steward, give written notice of the claimed violation to the work site representative of the involved CONTRACTOR. To be timely, such notice of the grievance must be given with 10 calendar days after the alleged act, occurrence or event giving rise to the grievance. The business representative of the Local Union or the job steward and the work site representative of the involved CONTRACTOR shall meet and endeavor to adjust the matter within 7 calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may, within 7 calendar days thereafter, pursue Step 2 of the grievance procedure by serving the involved CONTRACTOR with written copies of the grievance, setting forth a description of the claimed violation, the date on which the grievance occurred and the provisions of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 are nonprecedential except to the specific Local Union, employee and CONTRACTOR directly involved, unless the settlement is accepted in writing by the "City" or "Landbank" as creating a precedent.
  
- b) Should any signatory to this Agreement have a dispute (excepting jurisdictional disputes or alleged violations of Article VII, Section 1) with any other signatory to this Agreement and if, after conferring, a settlement is not reached within 14 calendar

days, the dispute shall proceed to Step 2 in the same manner as outlined in subparagraph (a) for the adjustment of employee grievances.

**STEP 2:**

The Business Manager or designee of LIUNA 17 and the involved CONTRACTOR shall meet in Step 2 within 14 calendar days of service of the written grievance to arrive at a satisfactory settlement.

**STEP 3:**

- a) If the grievance shall have been submitted but not resolved in Step 2, any of the participating Step 2 entities may, within 21 calendar days after the initial Step 2 meeting, submit the grievance in writing (copies to the other participants). The Labor Arbitration Rules of the American Arbitration Association shall govern the conduct of the arbitration hearing, at which all Step 2 shall be parties. The decision of the Arbitration shall be final and binding on the CONTRACTOR(s) and LIUNA 17 and employees involved. Any fees and expenses of the Arbitrator, shall be equally divided between the involved CONTRACTOR(s) and LIUNA 17.
- b) Failure of the grieving party to adhere to the time limits set forth in this Article shall render the grievance null, void and thereby waived. These time limits may be extended only by written consent of the involved CONTRACTOR(s) and involved Local Union(s) at the particular step where the extension is agreed upon. In the event a step involves the Arbitrator, then the written consent of the Arbitrator shall be required. The Arbitrator shall have authority to make decisions only on the issue presented to him and shall not have authority to change, add to, delete or modify any provision of this Agreement or the COUNTY's CONTRACT DOCUMENTS.

**ARTICLE X  
WAGES AND BENEFITS**

**SECTION 1. CLASSIFICATION AND BASE HOURLY RATE**

All employees covered by this Agreement shall be classified in accordance with the work performed and paid the base hourly wage rates for those classifications as specified in the attached Schedule A.

**SECTION 2. EMPLOYEE BENEFIT FUNDS**

- a) Contributions on behalf of all employees covered by this Agreement shall be paid by the CONTRACTORS on the project to the established employee benefit funds in the amounts designated in the appropriate Schedule A provided, however, that the CONTRACTOR and the Union agree that only such bona fide employee benefits as are explicitly required under Section 220 of the New York State Labor shall be included in this requirement and paid by the CONTRACTOR on this Project. Bona fide fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if similarly protected under Section 220.
- b) The CONTRACTORS on this Project shall be bound by the written terms of the legally established Trust Agreement specifying the detailed basis on which payments

are to be paid into, and benefits paid out of, such Trust Funds but only with regard to work done on this Project and only for those employees to whom this Agreement required such benefit Payments.

## **ARTICLE XI HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS AND HOLIDAYS**

### **SECTION 1. WORK WEEK AND WORK DAY**

- a) The regular workweek shall consist of 40 hours as straight time rates, Monday through Friday. The standard work day shall consist of 8 hours with a project start time uniformly set by the CONTRACTOR at 7:00 a.m. or 8:00 a.m., with one half hour unpaid lunch period to commence no earlier than 11:30 a.m. and no later than 2:00 p.m. If operational considerations warrant, upon one (1) week's advance notice, the work day may be further changed by agreement between the involved Unions(s) and the "City" or "Landbank" or "Contractor" and such agreement shall not be unreasonably withheld. Starting and quitting times shall occur at a location on-site such as the CONTRACTOR's job site office or trailer or other location as designated by the CONTRACTOR.
- b) A four (4) day work week, Monday through Thursday; ten (10) hours per day at straight time plus (1/2) hour unpaid lunch may be established with a one week notice. Friday may be used as a make-up day to fulfill the 40 hour work week due to inclement weather.

### **SECTION 2. OVERTIME**

Overtime pay for hours outside of the regular work week and standard work day shall be paid in accordance with the applicable Schedule A. There will be no restriction upon the CONTRACTOR's scheduling of overtime on the non-discriminatory designation of employees who shall perform such overtime work. There shall be no pyramiding of overtime pay under any circumstances. The CONTRACTOR shall have the right to schedule work so as to minimize overtime.

### **SECTION 3. SHIFTS**

- a) Flexible Schedules-Scheduling of shift work shall remain flexible in order to meet Project Schedules and existing Project conditions. It is not necessary to work a day shift in order to schedule a second shift. Shifts must be worked a minimum of five consecutive work days, must have prior approval of the COUNTY, and must be scheduled with no less than five work days notice to the Local Union. Regularly scheduled shifts will not be paid overtime rate, but rather a fixed percentage increase of 10% over the regular hourly rates.
- b) Flexible Starting Times-Shift starting times shall be adjusted by the CONTRACTOR as necessary to fulfill Project requirements, and in case of emergency, shall be subject to the notice requirements of the Schedule A agreements.

- c) A CONTRACTOR shall schedule an unpaid period of not more than 1 / 2 hour duration at the work location between the 3<sup>rd</sup> and 4<sup>th</sup> hour of the schedule shift. A CONTRACTOR may, for efficiency of operation, establish a schedule, which coordinates the meal periods of two or more crafts. If an employee is required to work through the meal period, the employee shall be compensated in a manner established in the applicable Schedule A.

#### SECTION 4. HOLIDAYS

- a) Schedule-There shall be 7 recognized holidays on the Project:

New Years Day	Labor Day
Presidents Day	Thanksgiving Day
Memorial Day	Christmas Day
Fourth of July	

- b) All said holidays shall be observed on the dates designated by the New York State Law. In the absence of such designation, they shall be observed on the calendar date except those holidays which occur on a Saturday shall be observed on the Friday before the holiday; and holidays on Sunday shall be observed on the following Monday.

- c) There will be no benefits paid on holiday pay unless worked.

- d) Payment-Regular holiday pay, if any, and/or premium pay for work performed on such a recognized holiday shall be in accordance with the applicable Schedule A.

- e) The Contractor or the City may elect to close the project down the Friday after Thanksgiving. This shall result in no cost to the City or contractors on the project.

#### SECTION 5. REPORTING PAY

- a) Employees who report to the work location pursuant to regular schedule and who are not provided with work or whose work is terminated early by a CONTRACTOR, for whatever reason, shall receive reporting pay in accordance with the applicable Schedule A.
- b) When an employee leaves the job or work location of their own volition or is discharged for cause or is not working as a result of the CONTRACTOR's invocation of Section 7, below, they shall be paid only for the actual time worked.
- c) There shall be no pay for time not actually worked except as specifically set forth in Schedule A.

#### SECTION 6. PAYMENT OF WAGES

Payment shall be made by check, drawn on a New York bank with branches located within commuting distance of the job site. Paychecks shall be issued by the

CONTRACTOR at the job site by 10 a.m. on Thursdays. In the event that the following Friday is a bank holiday, paychecks shall be issued on Wednesday of that week. Not more than 3 days wages shall be held back in any pay period. Paycheck stubs shall contain the name and business address of the CONTRACTOR, together with an itemization of deductions from gross wages.

Termination-Employees who are laid off or discharged for cause shall be paid in full for that which is due them at the time of termination. The CONTRACTOR shall also provide the employee with a written statement setting forth the date of lay off or discharged.

#### SECTION 7. EMERGENCY WORK SUSPENSION

A CONTRACTOR may, if considered necessary for the protection of life and/or safety of employees or others, suspend all or a portion of Project work. In such instances, employees will be paid for the actual time worked; provided however, that when a CONTRACTOR requests that employees remain at the job site available for work, employees will be paid for "stand-by" time at their hourly rate of pay.

#### SECTION 8. INJURY/DISABILITY

An employee who, after commencing work, suffers a work/related injury or disability while performing work duties, shall receive no less than 8 hours wages for that day. Further, the employee shall be rehired at such time as able to return to duties, as certified by a medical doctor, provided there is still work available on the Project for which the employee is qualified and able to perform.

#### SECTION 9. TIME KEEPING

A CONTRACTOR may utilize brassing or other systems to check employees in and out. Each employee must check in and out. The CONTRACTOR will provide adequate facilities for checking in and out in an expeditious manner.

#### SECTION 10. BREAK PERIODS

There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee's work location.

### ARTICLE XII APPRENTICES

#### SECTION 1.

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry from the City of Newburgh and to provide craft entry opportunities for minorities, women and economically disadvantaged. CONTRACTORS will employ apprentices to perform such work as is within their capabilities (and which is customarily performed by the craft in

which they are indentured). CONTRACTORS may utilize apprentices and such other appropriate classifications as are contained in the applicable Schedule A.

## **SECTION 2. OFFICE OF LABOR RELATIONS**

To assist the CONTRACTORS in attaining a maximum effort on this Project, the Unions agree to work in close cooperation with, and accept monitoring by, the New York State Department of Labor and the City of Newburgh to ensure that minorities and women are afforded every opportunity to participate in apprenticeship programs which result in the placement of apprentices on this Project. LIUNA 17 shall cooperate with CONTRACTOR requests for minority, women or economically disadvantaged referrals to meet this CONTRACTOR effort.

## **SECTION 3. PRE-APPRENTICESHIP**

Through LIUNA 17 and the City of Newburgh Pre-Apprenticeship Training has taken place through several city agencies, partnerships etc. with a goal to provide employment for City of Newburgh residents, including a lifelong career in the construction industry. It is the goal to establish a Pre-Apprentice Program for the City of Newburgh residents in the environmental field of construction and the craft of construction laborer and other building trade crafts in the future. Pre-apprentice rates established in the Agreement shall be for non-public work projects (not NYS DOL 220 covered work) and when allowed by New York State and Federal wage regulations.

# **ARTICLE XIII SAFETY PROTECTION OF PERSON AND PROPERTY**

## **SECTION 1. SAFETY REQUIREMENTS**

Each CONTRACTOR shall ensure that applicable OSHA requirements are at all times maintained on the Project. The Unions agree to cooperate fully with these efforts. Employees must perform their work at all times in a safe manner and protect themselves and the property of the CONTRACTOR and the CITY from injury or harm. Failure to do so will be grounds for discipline, including discharge.

## **SECTION 2. CONTRACTOR RULES**

Employees covered by this Agreement shall at all times be bound by the safety, security, and visitor rules as established jointly by the CONTRACTORS, LIUNA 17, the "City" and the "Landbank" and the Unions involved for this Project. Such rules shall be published and posted in conspicuous places through the Project.

## **SECTION 3. INSPECTIONS**

The CONTRACTORS, the CONSTRUCTION MANAGER and the CITY, by and through its agents and/or employees, shall retain the right to inspect incoming shipments of equipment, apparatus, machinery and construction materials of every kind.

**ARTICLE XIV  
NO DISCRIMINATION**

**SECTION 1. COOPERATIVE EFFORT**

The CONTRACTORS and Unions agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or age in any manner prohibited by law or regulation. It is recognized that special procedures may be established by CONTRACTORS and Local Unions and the New York State Department of Labor for the training and employment of persons who have not previously qualified to be employed on construction projects of the type covered by this Agreement. The parties to this Agreement will assist in such programs and agree to use their best efforts to ensure that the goals for female and minority employment are met on this Project.

**SECTION 2. LANGUAGE OF AGREEMENT**

The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

**ARTICLE XV  
GENERAL TERMS**

**SECTION 1. PROJECT RULES**

The CONTRACTORS involved shall jointly establish such reasonable Project rules as are appropriate for the good order of the Project. These rules shall be explained at the pre-construction conference and posted at the Project site and may be amended thereafter as necessary. Failure of an employee to observe these rules and regulations shall be grounds for discipline, including discharge. The fact that no order was posted prohibiting a certain type of conduct shall not be a defense to an employee disciplined or discharged for such conduct when the action taken is for cause.

**SECTION 2. TOOLS OF THE TRADE**

There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee's jurisdiction.

**SECTION 3. SUPERVISION**

Employees shall work under the supervision of the foreman.

**SECTION 4. TRAVEL ALLOWANCES**

There shall be no requirement for payments for travel expenses, travel time, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement.

## SECTION 5. FULL WORK DAY

Employees shall be at their designated staging area at the starting time established by the CONTRACTOR and shall be returned to their designated staging area by quitting time after performing their assigned functions under the supervision of the CONTRACTOR. The signatories reaffirm their policy of a fair day's work for a fair day's wage.

## SECTION 6. COOPERATION

The CONTRACTOR and LIUNA 17 will cooperate in seeking any NYS Department of Labor approvals that may be required for implementation of any terms of this Agreement.

## SECTION 7. UNION CONTRACTORS

In order to avoid a competitive disadvantage against Union Contractors who are awarded work on the Project that currently have agreements with Labor Unions (Union Contractors) shall be entitled to perform work under the terms of this Agreement without discrimination of this Project and without adverse effect on other projects current or future. Interference with the Union Contractor's work on this Project or on other projects current or future shall be a violation of this Agreement.

# ARTICLE XVI SAVINGS AND SEPARABILITY

## SECTION 1. THIS AGREEMENT

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of law, the provision involved shall be rendered, temporarily or permanently, null and void but the remainder of the Agreement shall remain in full force and effect. In such event, the Agreement shall remain in effect for already bid and awarded or in construction where the CONTRACTOR voluntarily accepts the Agreement. The parties to this Agreement will enter into negotiations for a substitute provision in conformity with the law and the intent of the parties for contracts to be let in the future.

## SECTION 2. THE CONTRACT DOCUMENTS

In the event that the provisions of the CONTRACT DOCUMENTS or other action, requiring that a successful bidder become a signatory, is found to be in violation of law, such requirement shall be rendered, temporarily or permanently, null and void, but the Agreement shall otherwise remain in full force and effect to the extent allowed by law, and shall remain in effect for contracts already bid and awarded or in construction where the CONTRACTOR voluntarily accepts the Agreement. The parties will enter into negotiations as to modifications to the Agreement to reflect the court action taken and the intent of the parties.

### **SECTION 3. NON-LIABILITY**

In the event of an occurrence referenced in Section 1 or Section 2 of this Article, neither the "City", the "Landbank", CONTRACTOR, nor LIUNA 17 shall be liable, directly or indirectly, for any action taken, to comply with any court order, injunction or determination: Project bid specifications will be issued in conformance with court orders then in effect and no retroactive payments or other action will be required if the original court determination is ultimately reversed.

## **ARTICLE XVII FUTURE CHANGES IN SCHEDULE A AREA CONTRACTS**

### **SECTION 1. CHANGES TO AREA CONTRACTS**

- a) Schedule A to this Agreement shall continue in full force and effect unless the parties to the Area Collective Bargaining Agreements which are the basis for Schedule A notify the CONTRACTOR and CITY in writing of the existence of changes in provisions of such agreements which are applicable to the Project, and their effective dates.
- b) It is agreed that any provisions negotiated into Schedule A collective bargaining agreements will not apply to work on this Project if such provisions are less favorable to this Project than those uniformly required of CONTRACTORS for construction work normally covered by those agreements, nor shall any provision be recognized or applied on this Project if it may be construed to apply exclusively, or predominantly, to work covered by this Project Agreement.
- c) Any disagreement between signatories to this Agreement over the incorporation into Schedule A of provisions agreed upon in the renegotiation of Area Collective Bargaining Agreement shall be resolved in accordance with the procedure set forth in Article IX of the Agreement.

### **SECTION 2. LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS**

The Unions agree that there will be no strikes, work stoppages sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article VII affecting the Project by any Local Union involved in the renegotiation of Area Local Collective Agreements nor shall there be any lock-outs on this Project affecting a Local Union during the course of such renegotiations.

In Witness Whereof the parties have  
Caused this Agreement to be executed  
And effective as of the \_\_\_\_ Day of  
\_\_\_\_\_, 2014.

<p><b>LIUNA 17</b> 451A Little Britain Road Newburgh, NY 12550 Phone: (845) 565-2737</p> <p>BY: _____ L. Todd Diorio, Business Manager Print: _____</p> <p><b>DRAFT</b></p>	<p><b>City of Newburgh</b> Newburgh, N.Y. 12550 Phone: (845) _____</p> <p>BY: _____ Judy Kennedy Print: _____</p> <p><b>DRAFT</b></p>
<p><b>City Of Newburgh</b> Newburgh, N.Y. 12550 Phone: (845) _____</p> <p>BY: _____ Print _____</p> <p>BY: _____ Print _____</p> <p><b>DRAFT</b></p>	<p><b>City of Newburgh</b> Newburgh, N.Y. 12550 Phone: (845) _____</p> <p>BY: _____ Print _____</p> <p>BY: _____ Print _____</p> <p><b>DRAFT</b></p>

SCHEDULE A

Please use posted NYS DOL rates for work classifications for laborers.

Pre-Apprenticeship

	<del>6/1/14</del>	<u>6/1/15</u>
Rate	\$17.00	\$17.50
Benefits	\$ 8.00	\$ 8.00