



City of Newburgh Council Work Session
*Sesión de trabajo del Concejal de la
Ciudad de Newburgh*

October 23, 2014

6:00 p.m.

AGENDA

1. Presentations

Presentaciones:

- a. A presentation by E-Design Dynamics on Green Infrastructure Feasibility Study.

Una presentación por E-Design Dynamics en el estudio natural de la viabilidad de la infraestructura.

- b. Presentation on the Rehabilitation of the tennis courts at Delano-Hitch Park and the implementation of a tennis program in the City of Newburgh Recreation Department by Dennis Maher, Newburgh Free Academy Tennis Coach and member of the Mid-Hudson Tennis Association.

Presentación en cuanto a la rehabilitación de las canchas de tenis en el Parque de Delano-Hitch y la implementación de un programa de tenis en el departamento de Recreación de la Ciudad de Newburgh.

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

- a. Resolution No. 266-2014

A resolution requesting an exemption from county taxes for the city's reservoir and filter plant properties for the year 2016.

Una resolución pidiendo una dispensación de los impuestos del condado adquiridos en la reserva de la ciudad y las propiedades de la planta de filtro por el año 2006.

3. Engineering / Ingeniería:

- a. Ordinance No.5-2014

An ordinance amending section 288-71, schedule xiii, parking prohibited at all times and section 288-74, schedule xvi, Parking prohibited certain hours, of the code of ordinances.

Un decreto corrigiendo sección 288-71, itinerario xiii: estacionamiento prohibido todo el tiempo y sección 288-74, itinerario xvi, estacionamiento prohibido a ciertas horas, del código de decreto.

b. Resolution No. 267-2014

A resolution authorizing the City Manager to accept a proposal and execute an agreement with Edward M. Weinstein Architecture & Planning, PC for professional services related to the Bathymetric survey and conceptual design of the Newburgh Landing Dock at a cost not to exceed \$52,000.00.

Una resolución autorizando al Gerente de la Ciudad a aceptar una oferta y llevar a cabo el trato con Edward M. Weinstein Architecture & Planning, PC de servicios profesionales relacionados con la encuesta de Altimetría y el diseño de conceptos del Puerto de Desembarcadero a un costo que no exceda \$52,000.00.

c. Resolution No.268-2014

A resolution authorizing the award of a Bid and the execution of a contract with Amstar of western New York in connection with the Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project - general construction at a cost of \$743,000.00.

Una resolución autorizando la otorgación de una propuesta y la ejecución del contrato con Amstar del oeste de Nueva York en conexión con el Proyecto de Rehabilitación de los tanques de almacenamiento de Agua de la Avenida de Ellis y la Avenida de Brady.

d. Resolution No. 269-2014

A resolution authorizing the City Manager to accept a proposal from the Chazen Companies to complete an updated boundary survey for city-owned property located at 86 Wisner Avenue in the amount of \$1,000.00 to complete the environmental easement in connection with the Environmental Restoration Program State Assistance Contract.

Una resolución autorizando al Gerente de la Ciudad a aceptar una oferta de las Compañías Chazen para completar una actualización de la encuesta de demarcación de una propiedad de la Ciudad de Newburgh localizada en el 86 de la avenida de Wisner, en la cantidad de \$1,000.00 para completar el contrato ambiental en conexión con el Contrato de Asistencia del Estado del Programa de Restauración Ambiental

e. Resolution No. 270-2014

A resolution authorizing the award of a bid and the execution of a contract with Titan roofing, Inc. In connection with the Activity Center Roof Replacement Project

At a cost of \$126,000.00.

Una resolución autorizando la otorgación de la propuesta y la ejecución del contrato con Titan roofing, Inc. en conexión con el Proyecto de Reemplazo del Techo del Centro de Actividades al costo de \$126,000.00.

f. Resolution No. 271- 2014

A resolution authorizing the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for third party asbestos monitoring in connection with the Roof replacement project at the activity center at a cost of \$500.00.

Una resolución autorizando al Gerente de la Ciudad a aceptar una oferta y ejecutar un acuerdo con Quality Environmental Solutions & Technologies, Inc. Para la vigilancia de asbesto por parte de un tercer partido en conexión con el Proyecto de Reemplazo del Techo del Centro de Actividades.

4. Finance / Finanzas:

a. Resolution No. 272-2014

A resolution amending resolution No: 247 - 2013, the 2014 budget for the City of Newburgh, New York to transfer \$50,000.00 from self insurance – corporation counsel employment liability legal services to corporation counsel – labor and employment.

Una resolución corrigiendo Nu: 247-2013, el presupuesto del 2014 de la Ciudad de Newburgh, NY para transferir \$50,000.00 de seguro propio – del consejo de la corporación por responsabilidad de empleo por servicios legales al consejo de la corporación – de labor y empleo.

5. Discussion / Discusión:

a. Discussion regarding 5 Scobie Drive Industrial Park Project.

Discusión acerca del Proyecto 5 Scobie Drive Industrial Park

b. Discussion on proposed Local Law adding Chapter 276 of the Code of Ordinances of the City of Newburgh Entitled “Tobacco” and enacting Article 1 Entitled “Tobacco Retail License”.

Discusión acerca de la Ley Local propuesta añadiendo el Capítulo 276 del Código de Decreto de la Ciudad de Newburgh titulado “tabaco” y promulgando el Artículo 1 titulado “ Licencia al por menor de Tabaco”

6. Executive Session/ Sesión Ejecutiva:
 - a. Pending Litigation/ *Litigios pendientes*

Bring Back the Courts!
A Proposal for Renovating the Tennis Courts at Deleno Hitch Recreational Park
By: Dennis Maher III

If you do a Google search and look up tennis courts in the city of Newburgh, you might be surprised to discover that there are six listed. Most people, when asked, are familiar with the two Desmond Tennis Courts located on South Street just east of Fullerton Avenue, near Newburgh Free Academy. Very few, however, are aware of the fact that four tennis courts are located on South William Street at Deleno Hitch Park, right across from the Newburgh Armory. The reason for this oversight is simple. The four tennis courts that are currently there are unusable. As you can see in the attached pictures, the nets are not up, the blacktop has cracked in many places and weeds exist where painted lines should be. The only game being played here is hard court soccer.

The lack of equitable resources for tennis participation in the city of Newburgh is abhorrent. Currently, if someone of low socioeconomic status wants to play tennis, the only option for them is to travel to South Street and hope that one of the two tennis courts are not being used. Sadly, this obstacle has detracted many people from picking up a sport that can literally last a lifetime.

I propose that a complete renovation of this tennis facility take place as soon as possible. My proposal includes renovating the existing courts; plus adding two more for a total of six. I also propose the addition of a new fence, restroom facility, and small parking lot. I also recommend a storage area/concession stand that would house supplies for the many different programs that could run from this new site.

As the boys' Varsity Tennis Coach at Newburgh Free Academy, I have the pleasure of working with some tremendous student-athletes. Most of the kids that I work with are fortunate to have financial resources that allow them to take lessons and travel to tennis programs that exist outside of their community. This is great for them, but, again, it's not a possibility for the many kids out there that have an interest in tennis but lack the resources. One of my goals, when I took over the tennis program three years ago was to tap into the talent of the inner city community. In order to do that however, we must bring back the courts at Deleno Hitch Park.

Newburgh Free Academy is one of the largest public high schools in New York State, but it is also one of the only schools in the state without a tennis facility for its boys and girls programs. The tennis teams have had to use Cronomer Park in the town of Newburgh for both practices and matches. This has been a standard practice for at least the last twenty-five years. Having a brand new tennis facility right in the heart of the city of Newburgh would give the boys and girls in the program a home base for the first time ever. I believe the city of Newburgh residents would take great pride in knowing that potential County, Section and State Champions could come out of their community.

Aside from using the courts for tennis practices and matches for both the boys and girls tennis teams at Newburgh Free Academy, these courts would also serve the inner city community at large who are starving for an opportunity to play tennis in the city of Newburgh. With these courts, I could run a number of different tennis clinics for kids and adults in the community. I could offer my services as an instructor to the Parks and Recreation Department to train their staff in 10 and Under Tennis Instruction. The Boys and Girls Club could add tennis to their curriculum for their many summer camps. The Newburgh Armory could do the same. Basically, the possibilities for instruction and play are endless.

Raising money for this project will not be easy but with the collaboration of many different organizations, it is very possible. The USTA offers grants for inner city communities like Newburgh; particularly with the renovation of existing facilities. To be considered for project funding, communities must:

- *Be actively engaged with the USTA Facility Assistance program (complete USTA Facility Assistance Form, be working with USTA-appointed project consultant, etc.). Any project completed prior to engaging the USTA is NOT eligible for funding.*
- *Meet Specified industry standards for project as determined by the USTA Facility Assistance program's technical team.*
- *Demonstrate financial need and matching (up to 50%) of project funds.*

Three years ago, I created the Goldback Tennis Club. The purpose of this Booster club was to raise money through different fundraising events in order to help grow the game of tennis, particularly in the City of Newburgh. Today, I'm proud to say, our booster club has partnered with the Mid-Hudson Valley Tennis Association to become a not for profit organization. Through this new affiliation we have been fortunate to raise funds and secure grants to help defray the costs of running a tennis clinic and to offer scholarships for private lessons in the wintertime. Our very first 10 and Under Tennis Clinics are slated to begin this fall.

Also this fall, we plan to award two scholarships for student-athletes in our program, who are in financial need, for private lessons during the winter months. The addition of this new tennis facility would expand our reach to the City of Newburgh residents; thus giving thousands of kids potential scholarship opportunities. If done right, the renovation of these tennis courts could bring about immeasurable returns. On July 29, 1960, then State Senator Thomas Desmond gave the two tennis courts on South Street to the City saying, "there can be no difference of opinion regarding the good which will result from adequate and healthful recreational facilities in a city such as Newburgh." I for one couldn't agree more.





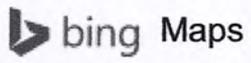






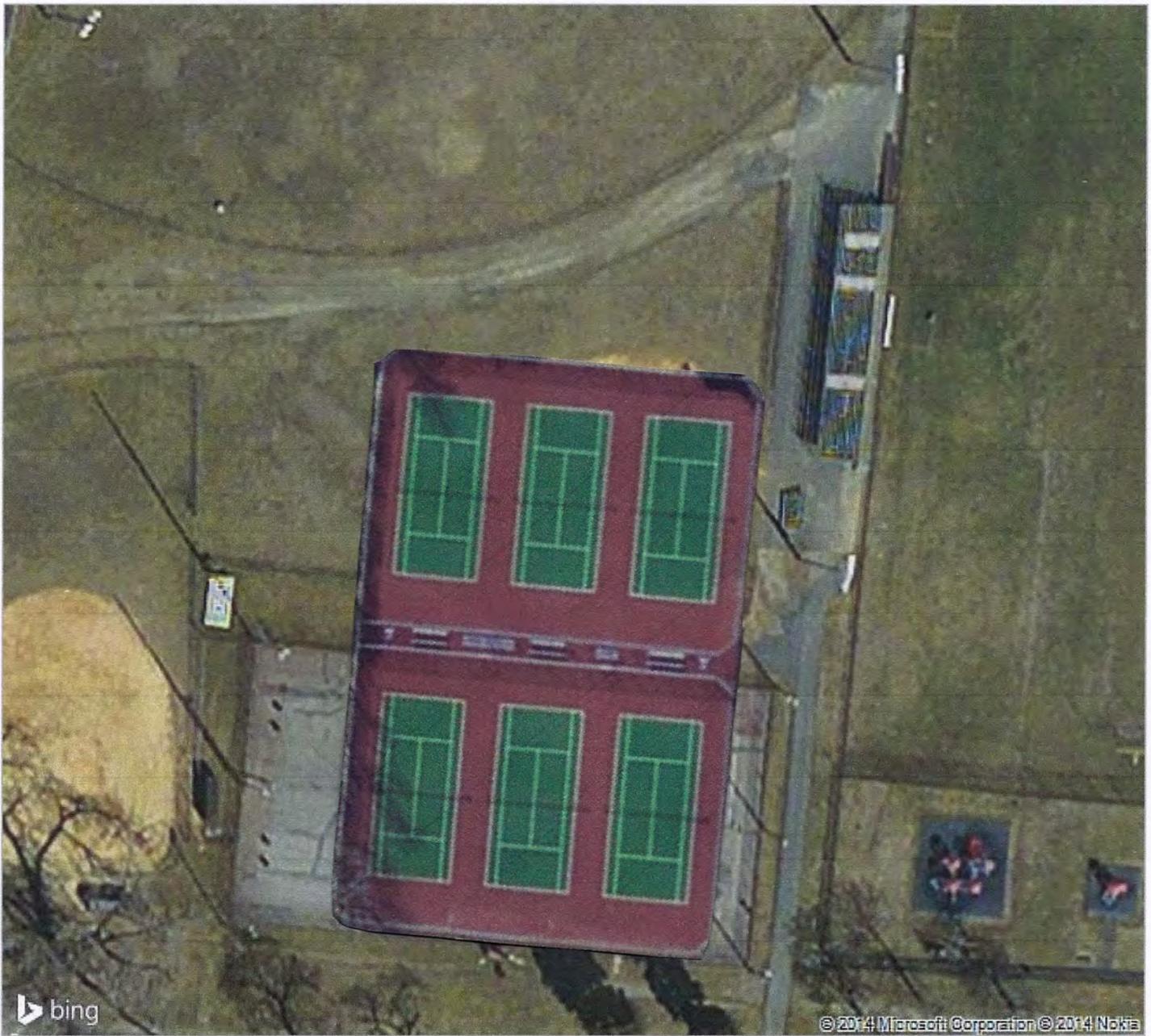
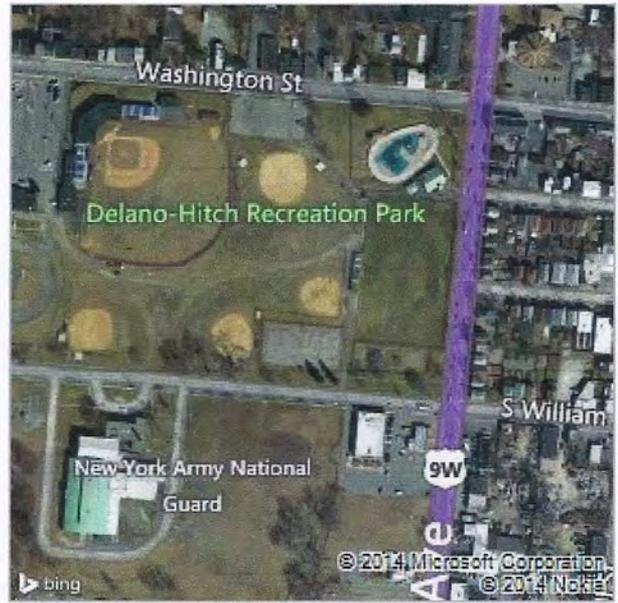






My Notes

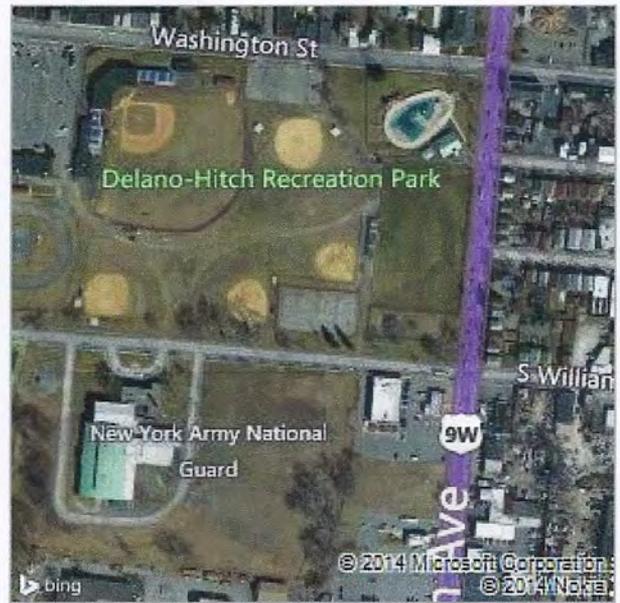
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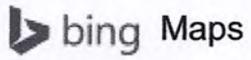


 bing Maps

My Notes

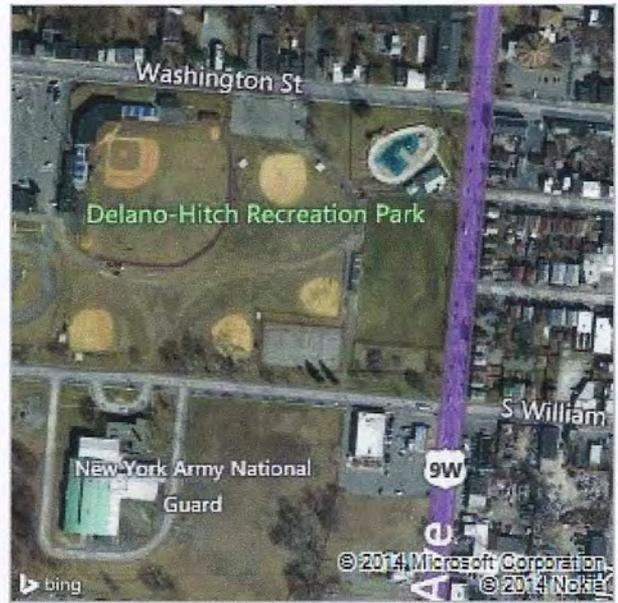
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My Notes

On the go? Use m.bing.com to find maps, directions, businesses, and more



RESOLUTION NO.: ²⁶⁶_____ - 2014

OF

OCTOBER 27, 2014

**A RESOLUTION REQUESTING AN EXEMPTION FROM COUNTY
TAXES FOR THE CITY'S RESERVOIR AND FILTER PLANT
PROPERTIES FOR THE YEAR 2016**

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

The requested exemption would include exemption from all taxation, special ad valorem levies and special assessments through December 31, 2016, so long as the subject premises are used for the aforesaid purposes.

The specific properties involved are as follows:

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

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to execute an Agreement, a copy of which is annexed hereto, with the County of Orange to effectuate such exemption.

AGREEMENT, made this ____ day of _____, 201____ by and between
THE CITY OF NEWBURGH, a municipal corporation duly organized and
existing under the laws of the State of New York and having its principal place of business
at City Hall, 83 Broadway, in the City of Newburgh, County of Orange, State of New
York; and

THE COUNTY OF ORANGE, a municipal corporation duly organized and
existing under the laws of the State of New York and having its principal place of business
at the Orange County Government Center, Main Street in the Village of Goshen, County
of Orange and State of New York,

WHEREAS, the City of Newburgh is the owner of several parcels of real property
located in the Towns of Newburgh and New Windsor, Orange County, New York and
designated on the official tax map of said towns as set forth in Schedule "A" annexed
hereto and made a part hereof; and

WHEREAS, The City of Newburgh uses said property for the operation of a water
filtration plant and reservoirs exclusively; and

WHEREAS, The County of Orange has in the past, imposed taxes against said
parcels of real property; and

WHEREAS, Section 406(3) of the Real Property Tax Law of the State of New York
in essence, inter alia, provides that real property owned by a municipality with a population
of less than 100,000 people, which property is located without its corporate limits and is
used as a reservoir or water filtration plant may be wholly or partially exempt from
taxation, special ad valorem levies, and special assessments, provided that the governing
board of the taxing authorities so agree in writing; and

WHEREAS, the aforesaid relief from County taxes was requested by said municipality by Resolution Number _____-2014 of October 27, 2014 of The City of Newburgh, New York; and

WHEREAS, the County of Orange was authorized to enter into this agreement by Resolution Number _____ of _____, dated _____, 200____, of the Orange County Legislature, it appearing that such agreement would be in the best interests of the citizens of Orange County,

NOW, THEREFORE, in consideration of the premises and pursuant to Real Property Tax Law, Section 406 (3), it is agreed as follows:

1. The County of Orange, by action of the Legislature thereof, shall wholly exempt the parcels of real property, listed in Schedule "A" annexed hereto, together with the buildings and improvements now existing thereon or hereinafter installed, owned by The City of Newburgh and exclusively used as a water filtration plant and reservoir properties, which properties are located in the Town of Newburgh and Town of New Windsor, County of Orange, State of New York, and which properties are designated by section, block and lot in Schedule "A", annexed hereto on the official tax map of said towns, from all taxation, special ad valorem levies, and special assessments levied by Orange County for the County tax year, January 1, 2016 to December 31, 2016 so long as the subject premises are used for the aforesaid purposes.

2. This agreement shall not be self-renewing and shall not be extended to any County tax year after December 31, 2016, unless the Orange County Legislature specifically renews or extends the same before the applicable taxable status date for any such year.

3. The County of Orange expressly reserves its right to impose, levy and collect with respect to the subject premises, any financial obligation not specifically excluded by the provisions of Real Property Tax Law, Section 406 (3).

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

[SEAL]

THE CITY OF NEWBURGH

By: _____
Michael G. Ciaravino
City Manager
Pursuant to Res. No.: _____ -2014

[SEAL]

THE COUNTY OF ORANGE

By: _____
Steven M. Neuhaus
County Executive

APPROVED AS TO FORM:

MICHELLE KELSON
Corporation Counsel

JOHN J. ABER
City Comptroller

SCHEDULE "A"

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

ORDINANCE NO.: 5 - 2014

OF

OCTOBER 27, 2014

AN ORDINANCE AMENDING SECTION 288-71, SCHEDULE XIII, PARKING PROHIBITED AT ALL TIMES AND SECTION 288-74, SCHEDULE XVI, PARKING PROHIBITED CERTAIN HOURS, OF THE CODE OF ORDINANCES

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Section 288-71, Schedule XIII, and Section 288-74, Schedule XVI, be and are hereby amended as follows:

Section 288-71. Schedule XIII: Parking Prohibited at All Times.

In accordance with the provisions of Section 288-21, no person shall park a vehicle at any time upon any of the following described streets or parts of streets:

<u>Name of Street</u>	<u>Side</u>	<u>Location</u>
<u>Spring Street</u>	<u>North</u>	<u>Beginning at a point perpendicular to a projection of the westerly curb line along Liberty Street and continuing west for a distance of 137 feet</u>
Spring Street	South	Entire length <u>Beginning at a point perpendicular to a projection of the westerly curb line along Liberty Street and continuing west for a distance of 154 feet</u>

Underlining denotes additions
~~Strikethrough~~ denote deletions

Section 288-74. Schedule XVI: Parking Prohibited Certain Hours.

In accordance with the provisions of Section 288-74, no person shall park a vehicle at any time upon any of the following described streets or parts of streets:

<u>Name of Street</u>	<u>Side</u>	<u>Hours/Days</u>	<u>Location</u>
Spring Street	North	8:00 a.m. to 3:00 p.m. Monday through Friday	Beginning on the north side of Spring Street extending from a point 50 feet east of the northeast corner of the intersection of Spring Street and South Lander Street 50 feet eastward
Spring Street	South	8:00 a.m. to 3:00 p.m. Monday through Friday	Extending from a point 36 feet east of the southeast corner of the intersection of Spring Street and South Lander Street 45 feet eastward

This Ordinance shall take effect immediately.

Underlining denotes additions
~~Strikethrough~~ denote deletions

ATLAS INDUSTRIES

26 November 2013
Ian MacDougall
City of Newburgh, City Planner
83 Broadway, 3rd floor
Newburgh, NY 12550

Dear Ian,

Pursuant to our previous conversations on this topic, please find enclosed a map indicating where we would like to establish 'no parking' zones on Spring St.

Since moving our furniture-making operation here earlier this year, we have frequently been in the situation where a tractor/trailer, either delivering materials or picking up product being shipped out, has been unable to access our yard due to cars parked on Spring St. between our driveway and Liberty St. This has resulted in unacceptable production delays, disappointed customers, and re-delivery fees from carriers.

Trucks typically turn west onto Spring St. from Liberty, and then attempt to turn left into our driveway. There is a utility pole at the east edge of our driveway (see drawing) that makes the turn radius tight, and requires that a truck use the entire width of Spring St. If cars are parked in the areas indicated by red, it is not possible to make the turn if the trailer exceeds 30' in length. This is an issue for both entry to and exit from the yard.

When Resnick was operating out of this building, he used the same carrier for all his shipping. The drivers knew about the tight turn, and would actually *back* into the driveway, either after pulling into lot 21 across Spring St. (which Resnick acquired specifically to deal with this problem), or by cutting across lot 12 (also acquired to help with this problem). We have a wide variety of carriers, both incoming and outgoing, and cannot expect drivers to know the conditions or how to manage them.

We are in the process of developing 11 Spring as a multi-tenant building, where, before too long, we expect a wide variety of businesses to be operating. Additional tenants and business activity will increase trucking activity, and amplify this problem.

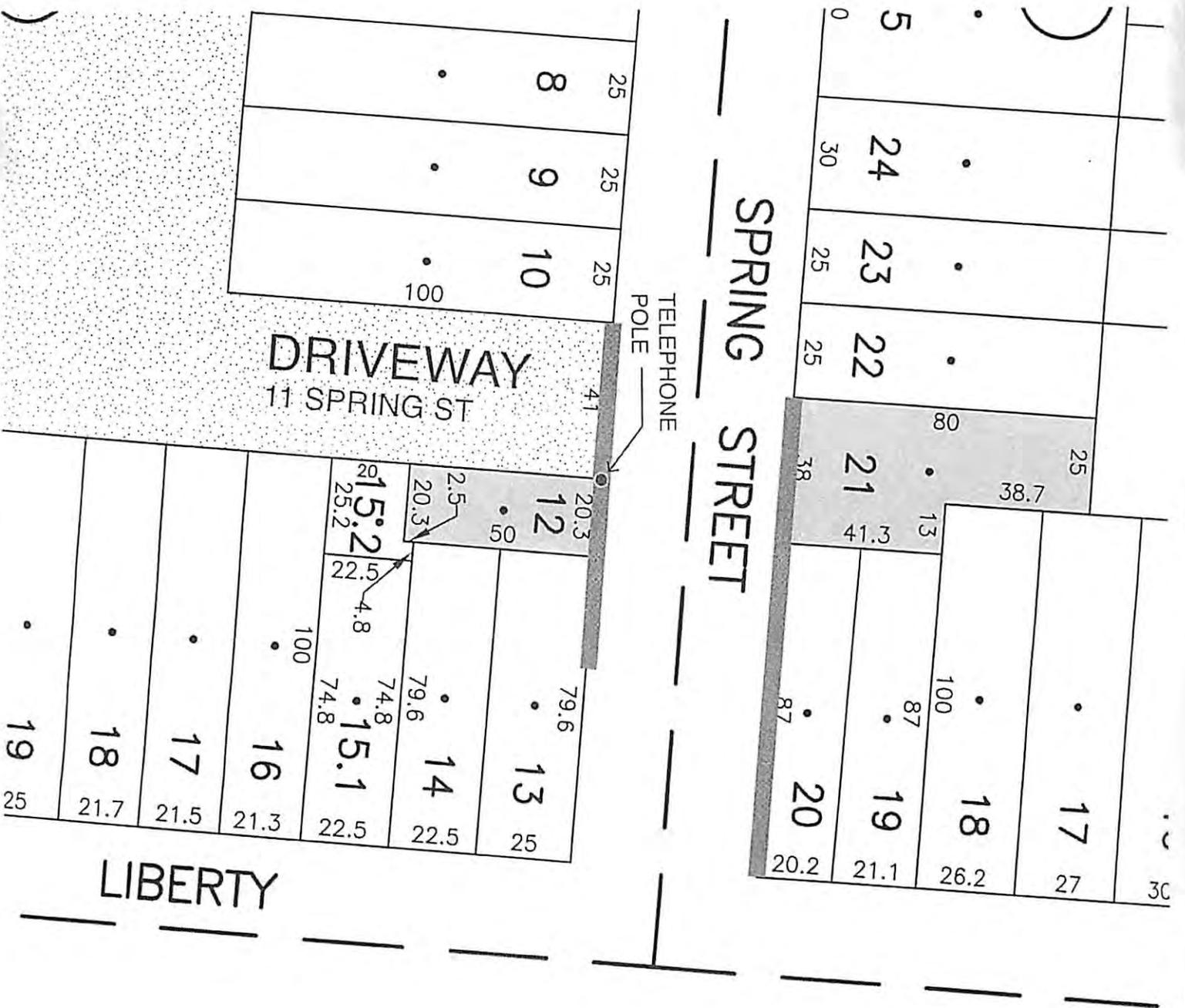
We feel that the impact on residential parking will be minimal. Lot 20 has a three-story mixed-use building that fronts Liberty St. Lot 13 has an unoccupied three-story building that fronts Liberty St. We own lots 12 and 21, both of which are vacant, to both of which we need street access for storage, tenant parking, etc. We are proposing that 1/3 of the Spring St. frontage of lot 13 (unoccupied) be restricted, and that all of lot 20's Spring St. frontage be restricted, as well as the street frontage of the property we own. So the only parking impact would be a partial restriction to the street frontage of lot 20.

We are happy to be both sponsoring and participating in the return of business and manufacturing to Newburgh, and hope that the City of Newburgh will promote that process by granting this request.

Respectfully yours,

Joseph Fratesi

Thomas Wright



SECTION 40

The area highlighted in red is where the "No Parking Zone" is being requested.

ATLAS INDUSTRIES
 11 SPRING ST
 NEWBURGH NY 12550

Kelson, Michelle

From: Morris, Jason
Sent: Thursday, October 16, 2014 3:05 PM
To: Kelson, Michelle
Cc: Wade, Chad
Subject: Atlas Industries - Parking Restriction on Spring Street
Attachments: Joseph Fratesi Email with Parking Times.pdf

Michelle,

I visited the Spring Street site today to determine the extent of the existing parking restriction signage. Only Street Sweeping and Snow Emergency parking restriction signage exists along the north and south side of Spring Street in the area under consideration for additional restrictions. As discussed, the current ordinance prohibits parking along the entire South Side of Spring Street. It appears that a reasonable compromise would be to restrict parking along the South Side of Spring Street, starting perpendicular to a projection of the curb line along Liberty Street, and continuing west to the point of intersection of the western property boundary of Atlas Industries with the Spring Street right-of-way; a distance of approximately 154 feet. We could then remove the parking restriction from the remainder of the South Side of Spring Street.

Along the north side, it appears that parking is restricted further to the west along Spring Street near the intersection with South Lander, for the purposes of keeping a loading zone clear. I believe a reasonable compromise would be to impose a parking restriction along the North Side of Spring Street, starting perpendicular to a projection of the curb line along Liberty Street, and continuing west for a distance of approximately 137 feet.

Also see attached email from Atlas Industries with their response to my inquiry regarding requested timeframes for imposing the restrictions mentioned above.

Jason C. Morris, PE
City Engineer
83 Broadway
Newburgh, New York 12550
Phone: (845) 569-7448
Fax: (845) 569-0188
jmorris@cityofnewburgh-nv.gov

RESOLUTION NO.: 267 - 2014

OF

OCTOBER 27, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
EDWARD M. WEINSTEIN ARCHITECTURE & PLANNING, PC
FOR PROFESSIONAL SERVICES RELATED TO THE
BATHYMETRIC SURVEY AND CONCEPTUAL DESIGN
OF THE NEWBURGH LANDING DOCK AT A COST NOT TO EXCEED \$52,000.00**

WHEREAS, by notice of a letter to the Interim City Manager, dated January 28, 2014, the City Engineer declared that the Newburgh Landing Dock had been substantially damaged due to ice flows in the Hudson River and was subsequently closed until further notice; and

WHEREAS, by Resolution No.: 89 - 2014 of April 14, 2014, the City Council of the City of Newburgh authorized the Interim City Manager to accept a proposal and execute an agreement with McLaren Engineering Group for dive inspection and structural evaluation services related to assessing damage to the Newburgh Landing Dock; and

WHEREAS, the City of Newburgh wishes to accept a proposal and execute an agreement with Edward M. Weinstein Architecture & Planning, PC for professional services related to the Bathymetric Survey and Conceptual Design of the future Newburgh Landing Dock; and

WHEREAS, the cost for such professional services will be \$52,000.00 and funding shall be derived from New York State Department of State Grant with match and 2012 Bond; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work would be 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 accept a proposal and execute an agreement with Edward M. Weinstein Architecture & Planning, PC for professional services related to the Bathymetric Survey and Conceptual Design of the Newburgh Landing Dock at a cost not to exceed \$52,000.00.

October 17, 2014

City of Newburgh
Office of the Comptroller
83 Broadway, Fourth Floor
Newburgh, New York 12550

Attn: Jason Morris, P.E., City Engineer

**Re: Proposal for Professional Services related to the Future Newburgh Landing Pier
Bathymetric Survey & Conceptual Design**

Dear Mr. Morris:

Edward M. Weinstein, Architecture + Planning, P.C. (EMWPC), is pleased to submit this agreement for professional services in connection with the Future Newburgh Landing Pier. Our services will include the following:

Scope of Services:

- 1) Attend a kickoff meeting and two additional meetings with City staff and public officials. Any further meetings will be billed as extra services at the rate of the fee schedule below.
- 2) Prepare a Bathymetric Survey of the river bottom in the area surrounding the existing Newburgh Landing. The survey will be performed by Hydro Data, Inc., a certified WBE. The survey will include the area from the shoreline to a line parallel to the shoreline and approximately 300 feet in an easterly direction. The other boundaries of the survey include the marina to the south and a line perpendicular to the shoreline approximately 100 feet north of the existing Newburgh Landing.
- 3) Solicit input from stakeholders and investigate the needs of commercial cruise lines wishing to dock vessels at the future Newburgh Landing. EMWPC will contact potential cruise lines in order to identify the docking requirements of each operator.
- 4) Prepare Base plans and conduct an initial public outreach meeting related to the proposed Newburgh Landing Pier with the stakeholders. This meeting will include a "blank slate" SWOT assessment (Strengths, Weaknesses, Opportunities, Threats).
- 5) Prepare two or three conceptual designs for the proposed Newburgh Landing Pier and related upland improvements.
- 6) Review the conceptual plans with City staff and develop the format and agenda for the second public meeting.
- 7) Conduct a second public meeting to present and discuss the conceptual plan options based on our discussions with City Staff.

- 8) Prepare and present to the City Council up to three conceptual designs, with cost estimates that incorporate adequate space for the mooring of commercial passenger vessels and public access for passive recreation. The design shall address the necessary ADA provisions required to facilitate increased access to the Hudson for individuals with disabilities.
- 9) Identify and finalize a preferred design alternative based upon staff and public outreach feedback and prepare a detailed cost estimate
- 10) Identify all necessary agency permits and approvals required for construction.
- 11) Assist City staff in drafting an RFP for professional services related to the preparation of construction documents.

Subject to confirmation at the kick-off meeting with the City we are prepared to conform to the attached timeline.

PROFESSIONAL FEE

Our fee for Tasks 1 through 11, shall be a fixed amount of Forty Eight Thousand Eight Hundred and Twenty Dollars (\$48,820.00), plus reimbursable expenses. Typical reimbursable expenses include costs for blueprinting, computer plots, photocopies and overnight mail. We shall bill you on a monthly basis, in accordance with the schedule below and the progress of the work. Payments shall be due within 30 days of receipt of our invoice.

Payment Schedule:

Tasks 1 and 2	\$ 5,220.00
Tasks 3 and 4	\$ 6,400.00
Tasks 5 and 6	\$12,000.00
Tasks 7 and 8	\$12,000.00
Tasks 9 and 10	\$10,000.00
Task 11	\$ 3,200.00
Total	\$48,820.00

Any services not covered under the Scope of Services are considered Additional. Additional services, if required, shall be on an hourly basis in accordance with the rate schedule below. . Hourly rates are subject to revision twelve months after the date of this proposal.

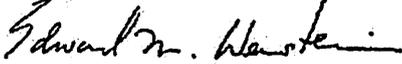
Principal:	Two Hundred Dollars per hour (\$200.00/hr)
Sr. Architect:	One Hundred Fifty Five Dollars per hour (\$155.00/hr)
Sr. Technical Staff:	One Hundred Twenty Five Dollars per hour (\$125.00/hr)
Planner:	One Hundred Twenty Dollars per hour (\$120.00/hr)
Technical Staff:	One Hundred Dollars per hour (\$100.00/hr)
Administrative Staff:	Forty Dollars per hour (\$40.00/hr)

In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant to the Client shall not exceed the Consultants' total fee for services rendered on this Project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

AGREEMENT:

If you are in agreement with these terms, please sign below and return one copy of the agreement. We look forward to working with you on this important project.

Sincerely,



Edward M. Weinstein, AIA

Signature

Dated

Task	Description	Date of Completion (assuming Week 1 is the date of contract execution)
Task 1	Kick-off Meeting	Week 1
Task 2	Bathymetric Survey	Week 2
Task 3	Site research, identify stakeholders, establish visioning process	Week 4
Task 4	First Public Outreach meeting	Week 6
Task 5	Prepare three conceptual designs	Week 8
Task 6	Pre-application discussions with regulatory agencies	Week 10
Task 7	Second Public Outreach meeting	Week 12
Task 8	Presentation to City Council	Week 14
Task 9	Finalization of chosen design alternative and cost estimate	Week 16
Task 10	Assist the City in the preparation of an RFP for Construction Documents	Week 18

RESOLUTION NO.: 268 - 2014

OF

OCTOBER 27, 2014

**A RESOLUTION AUTHORIZING THE AWARD OF A
BID AND THE EXECUTION OF A CONTRACT WITH
AMSTAR OF WESTERN NEW YORK IN CONNECTION
WITH THE ELLIS AVENUE AND BRADY AVENUE WATER STORAGE TANKS
REHABILITATION PROJECT - GENERAL CONSTRUCTION
AT A COST OF \$743,000.00**

WHEREAS, the City of Newburgh has duly advertised for bids for the General Construction and Electrical Construction in connection with the Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project; and

WHEREAS, three (3) bids were submitted and opened in connection with Contract 2, General Construction; and one (1) bid was submitted for Contract 3, Electrical Construction; and

WHEREAS, based on a comprehensive review of the bids submitted for Contract 2, General Construction, Barton & Loguidice has recommended that the City award said contract to Amstar of Western New York in the amount of \$743,000.00, and

WHEREAS, such amount includes the cost for Alternate Bid Item 4, the Grid Powered Reservoir Circulator, should it be determined that the solar powered circulator included in the base bid not fit within the tank due to the interior column spacing; and

WHEREAS, it is further recommended that the City set aside an additional five (5%) percent to account for any change orders during construction; and

WHEREAS, all funding shall be derived from the 2012 Bond; and

WHEREAS, based on a review of the bid submitted for Contract 3, Electrical Construction, Barton & Loguidice has recommended that the City reject such bid for Contract 3 as it has been determined that having only one responsive bidder will not serve the best interests of the project;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the bid for the Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project, Contract 2, General Construction, be and it is hereby awarded to Amstar of Western New York at a cost of \$743,000.00, including Alternate Bid Item 4, the Grid Powered Reservoir Circulator; and

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to enter into a contract, including terms and conditions as may be required by the Corporation Counsel and City Engineer, for such work in this amount; and

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to execute all related contracts and change orders up to five (5%) percent of the bid amount; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that all bids submitted in connection with the Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project, Contract 3, Electrical Construction, be and are hereby rejected.



Celebrating over 50 years of service

October 1, 2014

Mr. Jason Morris, P.E.
City Engineer
City of Newburgh
83 Broadway
Newburgh, NY 12550

Re: Recommendation for Award
Rehabilitation of Ellis Avenue & Brady Avenue Water Storage Tanks
City of Newburgh, Orange County, New York
File: 1352.002.001

Dear Mr. Morris:

Barton & Loguidice, D.P.C. (B&L) has reviewed the bids submitted for Contract 2 – General Construction and Contract 3 – Electrical Construction for the above referenced project and the certified bid tabulations are attached for your review. Three (3) bids were submitted for Contract 2 – General Construction, and only one (1) bid was submitted for Contract 3 – Electrical Construction.

Based on our review of the bids submitted for Contract 2 – General Construction and qualifications of the low bidder for the referenced project, B&L recommends the City award Contract 2 – General Construction to Amstar of Western New York in the amount of \$743,000.00. This includes the cost for Alternate Bid Item #4 – Grid Powered Reservoir Circulator should it be determined that the Solar Powered Circulator included in the base bid not fit within the tank due to the interior column spacing. Refer to the attached certified bid tabulation sheet.

Note that Amstar of Western New York, Inc. bid price of \$743,000.00 for the rehabilitation of the two tanks is \$200 higher than B&L's opinion of probable cost of \$742,800.00 provided in the Engineering Memo dated January 20, 2014, prior to the decision to separate the Contracts. It is our recommendation that the City award the Contract to Amstar of Western New York, Inc. in the amount of \$743,000.00. It is also recommended that the City set aside this Contract amount plus an additional 5% to account for any change orders during construction.

Based on our review of the bids submitted for Contract 3 – Electrical Construction and qualifications of the low bidder for the referenced project, B&L recommends the City reject all bids for this Contract. B&L is of the opinion that having only one responsive bidder will not serve the best interests of the project.

Please call should you have any questions.

Very truly yours,
BARTON & LOGUIDICE, D.P. C.

Anthony T. Eagan
Anthony T. Eagan, P.E.
Managing Engineer

ATE/ojf
Attachments

Z:\BL-Vault\VD2118217AD2-1C71-4823-8927-99D5C4054147\0652000-652999\652009\LA\1352.002.001 BID_RecommendLetter Ellis & Brady (10.6.52014).doc



CITY OF NEWBURGH
 1352.002.001 ELLIS & BRADY AVENUE WATER STORAGE TANK REHABILITATION
 BID OPENING - 11:00 AM, September 23, 2014
 BID TABULATION - CONTRACT 2



Item No.	Description	Estimated Quantities	Unit	Engineer's Opinion of Probable Costs		Amstar of Western New York, Inc.		JPI Painting, Inc.		Scaturro Bros. Inc. /a Alpine Painting & Sandblasting	
				Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	General Construction	1	LS	\$ 691,550.00	\$ 691,550.00	\$ 699,100.00	\$ 699,100.00	\$ 820,000.00	\$ 820,000.00	\$ 879,802.00	\$ 879,802.00
2	Additive Bid Item #2 Pit Filling	5	GAL	\$ 500.00	\$ 2,500.00	\$ 380.00	\$ 1,900.00	\$ 1,000.00	\$ 5,000.00	\$ 500.00	\$ 2,500.00
3	Lump Sum Extra Work (Hot Work)	1	LS	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
4	Ellis Ave Grid Powered Circulator	1	LS	\$ 38,750.00	\$ 38,750.00	\$ 32,000.00	\$ 32,000.00	\$ 49,000.00	\$ 49,000.00	\$ 45,000.00	\$ 45,000.00
TOTAL (ITEMS 1-4)					\$742,800.00	0.03%	\$743,000.00	19%	\$884,000.00	26%	\$937,302.00
ACKNOWLEDGE ADDENDA							X		X		X
BID FORM							X		X		X
IRANIAN ENERGY SECTOR DIVESTMENT							X		X		X
NON-COLLUSION CERTIFICATION							X		X		X
STATEMENT OF SURETY INTENT							X		X		X
BID BOND							X		X		X
APPRENTISHIP PROGRAM							X		X		Not NY DOL

WE CERTIFY THAT THIS TABULATION IS A TRUE AND CORRECT COPY OF THE CANVASS OF BIDS.
 BARTON & LOGUIDICE, D.P.C.

BY: Anthony E. Egan

CITY OF NEWBURGH
 1352.002.001 ELLIS & BRADY AVENUE WATER STORAGE TANK REHABILITATION
 BID OPENING - 11:00 AM, September 23, 2014
 BID TABULATION - CONTRACT 3



Item No.	Description	Estimated Quantities	Unit	Engineer's Opinion of Probable Costs		JPI Painting, Inc.	
				Unit Price	Amount	Unit Price	Amount
1	Electrical Construction	1	LS	50000	50000	\$ 75,000.00	\$ 75,000.00
TOTAL (ITEMS 1-4)					\$50,000.00	\$75,000.00	
ACKNOWLEDGE ADDENDA						X	
BID FORM						X	
IRANIAN ENERGY SECTOR DIVESTMENT						X	
NON-COLLUSION CERTIFICATION						X	
STATEMENT OF SURETY INTENT						X	
BID BOND						X	
APPRENTISHIP PROGRAM						X	

WE CERTIFY THAT THIS TABULATION IS A TRUE AND CORRECT COPY OF THE CANVASS OF BIDS.
 BARTON & LOGUIDICE, D.P.C.

BY: Anthony Eagan

RESOLUTION NO. 269 -2014

OF

OCTOBER 27, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A PROPOSAL FROM THE CHAZEN COMPANIES TO COMPLETE AN UPDATED BOUNDARY SURVEY FOR CITY-OWNED PROPERTY LOCATED AT 86 WISNER AVENUE IN THE AMOUNT OF \$1,000.00 TO COMPLETE THE ENVIRONMENTAL EASEMENT IN CONNECTION WITH THE ENVIRONMENTAL RESTORATION PROGRAM STATE ASSISTANCE CONTRACT

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

WHEREAS, an environmental easement in accordance with the Site Management Plan and Final Engineering Report is required to complete the SAC, and

WHEREAS, the environmental easement requires an updated boundary survey and the Chazen Companies have provided a proposal to update the boundary survey for the amount of \$1,000.00, which is a reimbursable cost under the SAC; and

WHEREAS, this Council has reviewed the proposal attached hereto and finds that authorizing the City Manager to accept the proposal is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to accept a proposal and execute a contract with the Chazen Companies in the amount of \$1,000.00 for an updated boundary survey for 86 Wisner Avenue in accordance with the New York State Department of Environmental Conservation Environmental Restoration Program State Assistance Contract.



Hudson Valley Office

21 Fox St., Poughkeepsie, NY 12601
P: (845) 454-3980 F: (845) 454-4026
www.chazencompanies.com

Capital District Office (518) 273-0055
North Country Office (518) 812-0513

October 15, 2014

Michelle Kelson, Esq.
Corporation Counsel
City Hall, 2nd floor
83 Broadway
Newburgh, New York 12550

*Re: Proposal for updated Boundary Survey #86 Wisner Ave, Newburgh NY.
Chazen #PR14-074*

Dear Ms. Kelson:

The Chazen Companies (Chazen) thank you for the opportunity to present this proposal for Professional Surveying Services to complete an updated survey for the property located at #86 Wisner Ave, Newburgh NY.

Task 001 – Updated Boundary Survey

Scope – Chazen will complete an updated boundary survey of the property located at #86 Wisner Ave, Newburgh NY. All surveying will be completed in accordance with the current DEC Specifications. The survey will demonstrate the location and description of all property boundaries, site improvements, easements and rights of way of record. The survey will also include:

1. A metes and bounds description of the subject property. (The City will retain a title company to pull the Schedule A that runs with title.)
2. A graphic scale.
3. The physical Address that is consistent with the DEC Agreement/Order/SAC. (The client has informed Chazen that the Environmental Easement encompasses the entire property.)

Deliverables – Upon completion of the survey, the client will be furnished with certified copies of the final survey and a letter of confirmation as outlined above.

Client Responsibilities – Please provide copies of current title report and/or abstracts of title, together with copies of schedule B exceptions for our use in completing the survey.

Schedule – Chazen is prepared to begin work within 2 weeks upon authorization. It is expected that the final survey would be available for delivery approximately 3 weeks from authorization.

Professional Services Fee Schedule

Chazen proposes to complete this work on a time and materials basis. Statements will be issued monthly for all services performed during that month.

Fee and Time Schedule Summary

Tasks		Fee Estimates	Proposed Schedules
Task No.	Task Description	Time & materials Fee Bill	Projected Start / End Dates
001	Property Boundary Survey	\$1,000	Start: 2 weeks upon authorization End: Delivery in 3 weeks

Agreement

Attached please find a copy of our Standard Agreement. Receipt of an executed copy of this Agreement will be our authorization to schedule the performance of this work. Please feel free to contact me at (845) 486-1587 if you have any questions whatsoever. Chazen looks forward to working with you on this project. Chazen will coordinate the date and time with the City Planner for the site visit to inspect the property.

Sincerely,



Martin M. Bayard
Manager of Field Operations

cc: Proposal 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 ___City of Newburgh___ (hereafter referred to as "Client").

1. **PURPOSE:** Client hereby retains Chazen to perform the services described in the Proposal For Professional Services dated October 15, 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.

10. **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.: 270 - 2014

OF

OCTOBER 27, 2014

**A RESOLUTION AUTHORIZING THE AWARD OF A BID
AND THE EXECUTION OF A CONTRACT WITH
TITAN ROOFING, INC. IN CONNECTION WITH THE
ACTIVITY CENTER ROOF REPLACEMENT PROJECT
AT A COST OF \$126,000.00**

WHEREAS, the City of Newburgh has duly advertised for bids for the Activity Center Roof Replacement Project; and

WHEREAS, bids have been duly received and opened and Titan Roofing, Inc. is the low bidder; and

WHEREAS, the total project cost will be \$126,000.00 and funding shall be derived from the 2013 BAN;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the bid for the Activity Center Roof Replacement Project be and it hereby is awarded to Titan Roofing, Inc., for the base bid amount of \$126,000.00; and

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to enter into a contract, including terms and conditions as may be required by the Corporation Counsel and City Engineer, for such work in this amount.

DRAFT AIA[®] Document A101[™] - 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the twenty-eighth day of October in the year two-thousand-fourteen

(In words, indicate day, month and year)

BETWEEN the Owner:

(Name, legal status, address and other information)

City of Newburgh
83 Broadway
Newburgh, New York 12550

and the Contractor:

(Name, legal status, address and other information)

Titan Roofing, Inc.
200 Tapley Street
Springfield, MA 01140

for the following Project:

(Name, location and detailed description)

Activity Center Roof Replacement
401 Washington Street
Newburgh, New York 12550

The Architect:

(Name, legal status, address and other information)

Collins+Scoville Architecture | Engineering | Construction Management, D.P.C.
(dba CSArch Architecture | Engineering | Construction Management)
19 Front Street
Newburgh, New York 12550-7601

CSArch Project Number: 611-14-02

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

<< >>

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

<< >>

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than << >> (<< >>) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

As per the Milestone Schedule included in the Construction Document. Subject to update per Specification 00 31 13 and 01 31 00.

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

<< >>

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One-hundred-twenty-six thousand dollars and no cents (\$ 126,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

<< >>

§ 4.3 Unit prices, if any:
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$ 0.00)
------	-----------------------	--------------------------

§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
------	-------

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

As per Specification 012900.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 27th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 30 (thirty) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported

by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of 5% (five percent). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of 5% (five percent);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

N/A

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

N/A

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

N/A

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[N/A] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[X] Litigation in a court of competent jurisdiction

[N/A] Other (Specify)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

N/A

§ 8.3 The Owner’s representative:

(Name, address and other information)

Collins+Scoville Architecture | Engineering | Construction Management, D.P.C.
(dba **CS**Arch Architecture | Engineering | Construction Management)
19 Front Street
Newburgh, New York 12550-7601

§ 8.4 The Contractor’s representative:

(Name, address and other information)

Titan Roofing, Inc.
200 Tapley Street
Springfield, MA 01140
Attention: Anthony Pazmino

§ 8.5 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

N/A

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Exhibit A – Table of Contents

Exhibit B – NYSDOL Prevailing Wage Schedule

Section	Title	Date	Pages

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Exhibit C, Drawing List

Number	Title	Date

§ 9.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

<< >>

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

<< >>

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount (\$ 0.00)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Michael Ciaravino – City Manager

(Printed name and title)

CONTRACTOR (Signature)

Anthony Pazmino, Vice President of Operations

(Printed name and title)



RESOLUTION NO.: 271 -2014

OF

OCTOBER 27, 2014

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC.
FOR THIRD PARTY ASBESTOS MONITORING IN CONNECTION WITH THE
ROOF REPLACEMENT PROJECT AT THE ACTIVITY CENTER
AT A COST OF \$500.00

WHEREAS, by Resolution No. 48-2014 of March 10, 2014, the City Council of the City of Newburgh authorized the Interim City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for limited pre-renovation asbestos and lead paint surveys in connection with roof renovations for the Activity Center located within Delano-Hitch Recreation Park; and

WHEREAS, the results of the surveys and testing found the presence of asbestos containing material which must be abated and removed in compliance with law, rule and regulation; and

WHEREAS, by Resolution No.: 93-2014 of April 14, 2014, the City Council of the City of Newburgh authorized the Interim City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for asbestos abatement design services in connection with roof renovations for the Activity Center located within Delano-Hitch Recreation Park; and

WHEREAS, Quality Environmental Solutions & Technologies, Inc. is a qualified environmental remediation consultant and has submitted a proposal for third party asbestos monitoring during asbestos abatement in connection with the Activity Center Roof Replacement Project; and

WHEREAS, the cost for these services will be \$500.00 and funding shall be derived from the 2013 BAN; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work 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 accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for third party asbestos monitoring in connection with the Roof Replacement Project at the Activity Center at a cost of \$500.00.

QuES&T

Quality Environmental Solutions & Technologies, Inc.

October 17, 2014

Mr. Jason Morris
City of Newburgh
83 Broadway
Newburgh, New York 12550

Dear Jason:

Thank you for the opportunity to discuss the needs of the City of Newburgh in the environmental consulting and remediation services area. Quality Environmental Solutions & Technologies, Inc. is pleased to submit the attached proposal to provide asbestos project final inspection services for your 401 Washington Ave., Newburgh NY project. QuES&T offers a wide range of environmental consulting, training, testing and "Turn-Key" Remediation Project services to the public and private commercial-industrial business sector.

QuES&T is a NYS Certified Minority Business Enterprise committed to remaining a leader in the environmental training and technical consulting industry. QuES&T's extensive Nuclear Power Industry experience makes us uniquely qualified to provide technical support in state-of-the-art techniques for engineering and contamination control. Additionally, this experience enables us to integrate the essential concepts of "critical path" schedules and minimizing personnel exposures while maintaining a high level of attention to the specific details of each project. QuES&T personnel satisfy numerous ANSI and NUREG experience requirements of the Nuclear Regulatory Commission. Our staff has served in various capacities in the Health Physics and Nuclear Engineering disciplines in operational power reactors, nuclear powered vessels, radio-pharmaceuticals and government prototypes.

We are confident you recognize that selection of a qualified technical consultant for professional services, such as pre-construction inspection, project design, project management and air monitoring, represents a step as critical as selecting a reputable environmental remediation contractor. QuES&T feels strongly that the success of any remediation project is defined primarily in the planning and design phase. A technically sound project design combined with proper oversight provides the most cost-effective solution and ensures the gains recognized are not at the expense of future liability to the City of Newburgh.

In this regard, QuES&T has successfully completed remediation projects, for our client companies, in support of Nuclear and Fossil commercial power plant maintenance outages, facility renovation and demolition, cGMP facility upgrades, recovery from contamination following catastrophic events (e.g. steam line explosions, fires), school building renovations, Corporate asbestos management programs, facility Operations & Maintenance (O&M) programs, UST removals, sub-surface investigations, contaminated soil remediation, LBP stabilization and commercial/residential asbestos & lead abatements.

October 17, 2014

Technical consulting services are available in the area of regulatory compliance audits, OSHA safety, air monitoring, respiratory protection, laboratory services, building hazard assessments (EPA, HUD, commercial), LBP Risk Assessments, management plans, NYS/NESHAP pre-demolition inspections and full scope project management; including development of remediation response actions and management of all required project and personnel records. Our staff of experienced environmental professionals can prepare all required specifications and procedures to ensure your programs comply with federal, state and municipal regulatory requirements.

QuES&T offers a wide range of OSHA and environmental safety training. Our full range of asbestos safety certification training ensures that our client's employees receive the appropriate training to maximize their safety and minimize your liability. QuES&T offers accredited initial and refresher training programs for Operations & Maintenance (O&M), Asbestos Abatement Workers and Supervisors, Project Monitors, Asbestos Project Sampling Technicians (RH-II), Asbestos Project Designers, Asbestos Inspectors (RH-III) and Management Planners. Our accredited training facility (EPA, NYS) contains the most modern equipment to support the hands-on portion of each training program. On-site training services are available for groups of at least twenty-five students and can be tailored to meet the specific needs of the City of Newburgh.

QuES&T provides a full range of services in the area of Respiratory Protection. Our technical staff has extensive experience in the development of regulatory compliance programs for NUREG 0041 and OSHA 1910.134 Respiratory Protection Programs. Quantitative or qualitative respirator fit services can be provided at QuES&T's facility or yours.

For additional information concerning any of our services, please contact me. We look forward to working with the City of Newburgh in the environmental consulting and remediation services area.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth C. Eck', written in a cursive style.

Kenneth C. Eck CIH, CSP, CFPS, CHMM, DABFE, FACFEI, LEED AP
Director, Safety, Environmental & Educational Services

QuES&T to provide the following services:

- Provide NYS/AHERA Asbestos Project Monitor(s) to perform one (1) Final Visual Inspection for completeness of abatement and completeness of cleanup as per ASTM Standard E1368 “Standard for Visual Inspection of Asbestos Abatement Projects”.
- Provide documentation of such final inspection indicating that 1) the project was successfully completed or 2) the project was not successfully completed, including additional recommendations for review and consideration by the client.

Project Notes:

- Two weeks advance notice of project start is required to ensure that proper equipment and sampling supplies can be obtained.
- Mileage will be billed at a rate of \$ 0.550 for actual mileage traveled.
- Any additional services provided to the client will be billed at standard company rates plus travel, tolls, materials, samples and miscellaneous expenses.
- OT Rate Applies to hours: > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
- Labor will be billed at half day and full day rates.
- Client will be responsible for any damage or loss to sampling equipment.
- Taxes are not included in this proposal.
- 5% fuel and insurance surcharge will be added to the final invoice

I. ASBESTOS SERVICES:**Item 1: Labor** (Minimum On-site Billing; 4 Hours @ OT Rate)

- **Sr. Principal:** \$225/Hr ST; \$255/Hr OT
- **Principal:** \$185/Hr ST; \$225/Hr OT
- **Project Manager:** \$90/Hr ST/OT
- **EPA/NYSDOL/NYCDEP Asbestos Inspector:**
 \$320/4-hr day Includes Calibrated Area A/S Equipment
 \$500/8-hr day Includes Calibrated Area A/S Equipment
 \$ 80/hr OT
- **EPA/NYSDOL Combined Project Monitor/Air Sampling Technician:**
 \$275/4-hr day Includes Calibrated Area A/S Equipment
 \$400/8-hr day Includes Calibrated Area A/S Equipment
 \$ 75/hr; OT

Item 2: Asbestos Laboratory Services

- **A/S Sample Analysis (PCM):**
 \$ 12/Sample Includes 72-hr turn-around of results
 \$ 15/Sample Includes 24-hr turn-around of results
 \$ 17/Sample Includes 6-hr turn-around of results
 \$ 20/Sample Includes Rush turn-around of results.
- **A/S Sample Analysis (AHERA-TEM):**
 \$100/Sample Includes 48-hr turn-around of results
 \$125/Sample Includes 24-hr turn-around of results
 \$175/Sample Includes 12-hr turn-around of results
 \$225/Sample Includes 6-hr turn-around of results
- **Bulk Sample Analysis (PLM):**
 \$ 14/Layer Includes 7 day turn-around of results
 \$ 16/Layer Includes 5 day turn-around of results
 \$ 20/Layer Includes 72-hr turn-around of results
 \$ 25/Layer Includes 24-hr turn-around of results
 \$ 30/Layer Includes 12-hr turn-around of results
 \$ 45/Layer Includes Rush turn-around of results
- **Bulk Sample Analysis (PLM-NOB):**
 \$ 16/Layer Includes 7 day turn-around of results
 \$ 23/Layer Includes 5 day turn-around of results
 \$ 30/Layer Includes 48-hr turn-around of results
 \$ 40/Layer Includes 24-hr turn-around of results
 \$ 60/Layer Includes 12-hr turn-around of results
- **Bulk Sample Analysis (QTEM):**
 \$ 25/Layer Includes 7 day turn-around of results
 \$ 50/Layer Includes 5 day turn-around of results
 \$ 65/Layer Includes 48-hr turn-around of results
 \$ 70/Layer Includes 30-hr turn-around of results
 \$ 110/Layer Includes 12-hr turn-around of results

NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

II. SAFETY & ENVIRONMENTAL SERVICES:

Item 1: Labor (Minimum On-site Billing; 4 Hours @ OT Rate)

- **Certified Industrial Hygienist:** \$175/Hr ST; \$215/Hr OT
- **Certified Safety Professional:** \$175/Hr ST; \$215/Hr OT
- **EPA LBP Inspector/Risk Assessor:** \$ 90/Hr ST/OT
- **IH Tech:** \$320/4-hr day Includes Calibrated Area A/S Equipment
\$500/8-hr day Includes Calibrated Area A/S Equipment
\$ 80/hr; OT

Item 2: Laboratory Services

- **Lead - Air/Paint Chip/Dust Sample Analysis (AAS/FLAA):**
 - \$ 20/Sample Includes 3-5 Day turn-around of results
 - \$ 25/Sample Includes 48-hr turn-around of results
 - \$ 30/Sample Includes 24-hr turn-around of results
 - \$ 45/Sample Includes 6-hr turn-around of results
- **PCB – Bulk Material Sample Analysis:**
 - \$100/Sample Includes 5 Day turn-around of results
 - \$150/Sample Includes 3 Day turn-around of results
 - \$200/Sample Includes 48-hr turn-around of results
 - \$250/Sample Includes 24-hr turn-around of results

Item 3: Equipment Charges

- Niton XRF: \$175/Day
- Electrical Generator: \$ 75/Day (2-Day Minimum)
- SCBA: \$300/Day
- Confined Space Tripod: \$ 150/Day

NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

III. INDUSTRIAL HYGIENE SERVICES:

Item 1: Labor (Minimum On-site Billing; 4 Hours @ OT Rate)

- **Certified Industrial Hygienist:** \$175/Hr ST; \$215/Hr OT
- **Certified Safety Professional:** \$175/Hr ST; \$215/Hr OT
- **Industrial Hygiene Scientist/CBST** \$125/Hr ST; \$150/Hr OT
- **Project Manager:** \$ 90/Hr ST/OT
- **IH Tech:** \$320/4-hr day Includes Calibrated Area A/S Equipment
\$500/8-hr day Includes Calibrated Area A/S Equipment
\$ 80/hr; OT

Item 2: Microbiological Laboratory Services

- **Air Sample Analysis (Total Spore Counts):**
\$120/Sample Includes same-day turn-around of results
\$100/Sample Includes 24-48 hr turn-around of results
\$ 80/Sample Includes 5-7 day turn-around of results
- **Air Sample Analysis (Culturable Fungi; One Medium):** Sample Turn-Around Time 7-10 Days
\$ 70/Sample Enumeration & Identification to genus or species
ADD \$ 45/Sample To Include Full Fungal Speciation (Including ID Of Cladosporium and Penicillium to Species; 2% MEA Only)
- **Air Sample Analysis (Culturable Bacteria; One Medium):** Sample Turn-Around Time 7-10 Days
\$ 70/Sample Enumeration & Identification to genus or species
- **Bulk/Swab Sample Analysis (Culturable Fungi; One Medium):** Sample Turn-Around Time 7-10 Days
\$ 90/Sample Enumeration & Identification to genus or species
ADD \$ 45/Sample To Include Full Fungal Speciation (Including ID Of Cladosporium and Penicillium to Species; 2% MEA Only)
- **Bulk/Swab Sample Analysis (Culturable Bacteria; One Medium):** Sample Turn-Around Time 7-10 Days
\$ 90/Sample Enumeration & Identification to genus or species
- **Other Microbiological Services and PCR Technology Available: CALL FOR PRICING**
- **Additional Industrial Hygiene Services Available: CALL FOR PRICING AND CAPABILITIES**

Item 3: Equipment Charges

- Anderson Air Sampler: \$125/Day (Single Stage N-6 Impactor)
- Boroscope: \$ 50/Day
- 4-Gas Monitor w PID: \$200/Day
- Infrared Camera: \$225/Day
- Delmhorst BD-2100: \$ 100/Day (Moisture Survey Meter)
- ASHRAE IAQ Meter: \$200/Day
- PM-10 Impactor/Sampler: \$125/Day
- Additional Equipment: Call For Pricing

NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

IV. MISCELLANEOUS SERVICES

Item 4: Miscellaneous Services

- Asbestos/Lead/Environmental 'Letter' Report w/o Drawings - \$150/each.
- Asbestos/Lead/Environmental 'Letter' Report w/KeyCAD Drawings - \$200/each.
- Asbestos/Lead/Environmental 'Final Report' w/o Drawings - \$250/each.
- Asbestos/Lead/Environmental 'Final Report' w/KeyCAD Drawings - \$300/each.
- Abatement Specifications / AutoCAD / Bidding Process – Priced Based on Scope of Work.
- Conduct Onsite Bid Walkthrough w/Prospective Contractors – Priced Based on Scope of Work.
- Travel & Misc. Materials – Actual Mileage (@ \$0.550/mile) plus Actual Tolls & Parking.
- Laboratory analysis turnaround times begin when samples are received at Laboratory and does not include weekends or holidays.

RESOLUTION NO.: 272 - 2014

OF

OCTOBER 27, 2014

A RESOLUTION AMENDING RESOLUTION NO: 247 - 2013,
THE 2014 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$50,000.00 FROM SELF INSURANCE – CORPORATION COUNSEL
EMPLOYMENT LIABILITY LEGAL SERVICES TO CORPORATION COUNSEL – LABOR
AND EMPLOYMENT

BE IT 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:

	<u>Decrease</u>	<u>Increase</u>
M.1420 Self-Insurance-Corporation Counsel		
.4300 Employment Liability Legal Services	\$ 50,000.00	
A.1420 Corporation Counsel		
.0448.5018 Labor & Employment		\$50,000.00
<u>Total</u>	\$50,000.00	\$50,000.00

ACCESS AND EASEMENT AGREEMENT

BETWEEN

CITY OF NEWBURGH,

AND

CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY

This Access and Easement Agreement (“Agreement”), effective as of [_____ , 2014] (the “Effective Date”), is hereby made by and among:

A. The City of Newburgh, Orange County, New York, its agencies, departments, officers, employees, agents, representatives, successors and assigns, collectively referred to in this Agreement as the “City”; and

B. The City of Newburgh Industrial Development Agency, Orange County, New York, its agencies, departments, officers, employees, agents, representatives, successors and assigns, collectively referred to in this Agreement as the “IDA”.

The City and the IDA are collectively referred to herein as “the Parties” and individually referred to as a “Party”.

WHEREAS, Hudson Valley Lighting Inc. is a business operating within the City of Newburgh and has outgrown its current location; and

WHEREAS, the IDA is the sole owner of a parcel of land known as 5 Scobie Drive and more accurately described as Section 1, Block 1, Lot 6 as shown on the tax map of the City of Newburgh (the “IDA Property”); and

WHEREAS, the City is the sole owner of a parcel of land known as 70 Pierces Road more accurately described as Section 5, Block 1, Lot 16 as shown on the tax map of the City of Newburgh (the “City Property”); and

WHEREAS, Hudson Valley Lighting Inc. desires to remain in operation within the City has expressed an interest in relocating its business to the IDA Property; and

WHEREAS, to facilitate the relocation of Hudson Valley Lighting to the IDA Property, certain pre-development activities are required, including but not limited to access to City property and the granting of a temporary construction and grading easement over a portion of the City Property to the IDA and the granting of a permanent access easement for construction and maintenance of stormwater facilities over a portion of the IDA property to the City;

NOW, THEREFORE, in consideration of the mutual covenants and promises as set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions:** The following terms used in this Agreement have the following meanings:
 - (a) “Access and Easement Areas” means that portion of the City Property and that portion of the IDA Property as described in and shown on Exhibit A.
 - (b) “Permittees” (individually a “Permittee”) means the IDA and each of its employees, agents, representatives, successors, assigns, consultants, contractors, and subcontractors which are involved in the performance of the IDA’s Obligations.
 - (c) “Assignee” means Hudson Valley Lighting, Inc. or an entity wholly-owned by Hudson Valley Lighting, Inc. as the assignee of the IDA’s rights and obligations under this Agreement through a separate agreement between the IDA and Hudson Valley Lighting, Inc.
 - (c) “DEC” means the New York State Department of Environmental Conservation and its divisions and employees.
 - (d) “Pre-development Activities” means tasks associated with the regrading and granting of a temporary construction and grading easement over property of the City to the IDA and such other activities as may be necessary or as required by the New York State Department of Environmental Conservation for the successful remediation of the IDA property by Hudson Valley Lighting Inc. under the Brownfield Cleanup Program, including the easement over the City Property being transferred to the IDA, the granting of a permanent access easement for construction and maintenance of stormwater facilities over the IDA Property to the City, and the closeout of the U.S. Department of Commerce Economic Development Administration Grant Award (the Pre-development Activities and the conduct of such other activities as may be necessary or as required by the DEC, collectively referred to as “IDA Obligations”).
 - (e) “Access and Easement Agreement” means an agreement by which the City grants to the IDA a temporary construction and grading easement of access to the “Access and Easement Areas” for the purpose of creating and maintaining grading and landscaping and the IDA grants to the City a permanent easement of access to the “Access and Easement Areas” for construction and maintenance of stormwater facilities as shown on Exhibit A.
 - (f) “EDA” means the U.S. Department of Commerce Economic Development Administration or the grant awarded to the City and the IDA as joint applicants.

2. **Agreement Is a Contract:** The Parties to this Agreement intend this Agreement to be a contract and to be enforceable as such. The contract shall be governed and interpreted according to the laws of the State of New York.
3. **Claims Against Non-Parties:** Nothing herein shall affect the right of any Party to pursue its rights, including, but not limited to, rights of contribution and indemnification, against entities not a Party to this Agreement relating in any way to the Environmental Conditions existing on the City Property and the IDA Property.
4. **Good-Faith Cooperation:** The Parties shall coordinate and cooperate in good faith with each other to achieve the objectives of this Agreement. Included within the duty of good faith is the duty of the IDA to periodically and timely inform the City of the activities they are undertaking to implement its responsibilities hereunder and of the City to periodically inform the IDA of the activities it is undertaking to implement its responsibilities hereunder.
5. **Dispute Resolution:** The Parties shall make all reasonable efforts to resolve informally any questions or disputes that arise in the implementation or interpretation of this Agreement. The Parties agree that, except as otherwise provided herein, prior to seeking judicial enforcement of this Agreement, they will engage in a mutually acceptable form of alternative dispute resolution (“ADR”), to be conducted in New York, for a period of not less than one month and not to exceed three months. Notwithstanding the foregoing, however, if (a) the Parties are unable to agree upon a mutually acceptable form of ADR within a period of one month from the date that the Party seeking enforcement of this Agreement so notifies the other Parties, (b) the ADR process fails to achieve a mutually acceptable resolution within the time period set forth in the foregoing sentence, or (c) the Party seeking enforcement of

this Agreement deems the circumstance to be an emergency such that it believes it necessary to seek immediate injunctive or other equitable relief, then, in any such event, the Parties retain their rights to seek judicial enforcement of this Agreement.

6. **No Admissions:** The entry into this Agreement shall not be deemed or construed as an admission by any Party of liability, fault or wrongdoing under CERCLA or any other statute, contract or common law. In the implementation of this Agreement, the Parties shall not be required to make any admission of liability to federal or state governmental entities for any purpose whatsoever.

7. **Responsibilities of the City:** In exchange for the promises and covenants contained herein, the City shall:
 - (a) Provide timely access to the City Property to any Permittee and Hudson Valley Lighting Inc., as the Assignee, for the performance of the IDA's Obligations in accordance with this Agreement. Notwithstanding anything to the contrary and without in any way limiting the foregoing, the provision of access shall include, but not be limited to: a license or privilege of entering upon the City property and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary for the purposes of engaging in predevelopment activities which activities may include, but are not limited to, conducting surveys, physical inspections, tests, engineering and construction evaluation and reports, architectural study and planning, and environmental study, testing, and such other tests and site evaluations as are reasonably required for an evaluation and remediation of the property and the prosecution of any applications for governmental approvals, and regrading as shown on Exhibit A.

- (b) As the Assignee, provide to Hudson Valley Lighting, Inc., or an entity wholly-owned by Hudson Valley Lighting, Inc. formed for the purpose of successfully completing the requirements of the Brownfield Cleanup Program for the remediation and re-development of the IDA Property including the portion of the City Property subject to the Pre-development Activities set forth herein access to the City Property and all rights and permissions to the full extent as required by the Brownfield Cleanup Program. In addition, the City shall provide to Hudson Valley Lighting, Inc., as the Assignee, access to all technical, environmental and other records relating to the City Property.
- (c) The license or privilege hereby given shall commence upon the execution of this Agreement between the Parties. It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.
- (d) Cooperate with the IDA in the performance of its responsibilities pursuant to Paragraph 8 below.
- (e) Provide assistance for the re-development of the IDA Property, including the Access and Easement Areas, site investigation and remediation and other pre-development activities with New York State DEC and local governmental agencies and other similar applicable parties. The City shall provide assistance reasonably requested by the IDA and Hudson Valley Lighting in obtaining licenses, approvals, permits and other cooperation from local, state, and Federal agencies and local governmental bodies; provided, however, that

except as otherwise specifically described herein, the IDA and Hudson Valley Lighting shall have the primary responsibility for obtaining such approvals and cooperation.

- (f) Cooperate with the IDA and Hudson Valley Lighting, as the Assignee, in securing additional funding needed to complete the re-development of the IDA Property, including the portion of the City Property over which an easement is being transferred to the IDA pursuant to this Agreement. The City shall provide support applications for funding from other sources in the form of letters and resolutions of support.
- (g) The City hereby agrees to enter into the Access and Easement Agreement with the IDA to provide a temporary construction and grading easement over the Access and Easement Area as shown on Exhibit A in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law. Insurable title to the City Property as required for purposes of the Access and Easement Agreement shall be conveyed by the City to the IDA at or prior to closing subject only to such exceptions to title as the IDA may approve, which approval will not be unreasonably withheld.
- (h) The purchase price for the Access and Easement Agreement shall be the granting of a permanent access easement for the construction and maintenance of stormwater facilities by the IDA to the City over the portion of the IDA property as shown in the Access and Easement Areas in Exhibit "A" in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law.
- (i) The City will not accept additional hazardous wastes on the City Property from neighboring properties, and further represents that the City will take all reasonable and necessary action to prevent the City Property from accepting any and all hazardous waste found on parcels adjacent to the City Property, known as the Dupont-Stauffer Superfund

site and further represents that it will not request to re-open any records of decision in connection with the United States Environmental Protection Agency Administrative Settlement Agreement and Order on Consent for a Removal Action among E.I. DuPont de Nemours & Company, Bayer CropScience, Inc. (Successor-in-Interest to Stauffer Chemical Company) and EPA, Index Number CERCLA-02-2010-200X, effective October 4, 2010.

(j) The City shall not be responsible for the costs of the Pre-development Activities authorized under this Agreement.

8. **Responsibilities of the IDA:** In exchange for the promises and covenants contained herein, the IDA shall:

(a) Except as otherwise provided in this Agreement, implement all requirements of the Pre-development Activities, including, but not limited to, the survey of the City Property and IDA property.

(b) The IDA shall be responsible for the costs of the City's obligations as set forth in Paragraph 7.

(c) The IDA shall require that any of its contractors or subcontractors who (i) perform any portion of the Pre-development Activities at the City Property or (ii) enter onto the City Property shall provide the insurance coverages herein on the terms set forth, at their expense, Worker's Compensation insurance, public liability insurance covering personal injury and property damage, and other insurance with minimum coverages as listed below. Such policies shall be written by insurers of recognized financial standing who have been fully informed as to the nature of the Work to be performed. The Commercial

General Liability Insurance shall be written on an ISO Occurrence Form (or equivalent). Except for Worker’s Compensation insurance, the City shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligations of such contractors and subcontractors and not those of the City. Each policy naming the City as an additional insured shall not contain an “owned property exclusion” nor a “severability of interest exclusion.”

<u>Type of Coverage</u>	<u>Limits of Coverage</u>
Worker’s Compensation	Statutory
Employer’s Liability or similar insurance	\$1,000,000 each occurrence
Automobile Liability	\$1,000,000 aggregate
Bodily Injury	\$1,000,000 each occurrence
Property Damage	
Commercial General Liability, including broad form contractual liability, bodily injury, and property damage	\$2,000,000 aggregate \$1,000,000 each occurrence

Prior to the commencement of the Pre-development Activities, the IDA shall require the contractors and subcontractors retained by the IDA or its assigns to submit to the City upon the City’s request certificates of insurance evidencing compliance by such contractors and subcontractors with these requirements.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the City with respect to its interests, (ii) it shall not be canceled, including without limitation, for non-payment of premium, or materially amended without thirty

(30) days' prior written notice to the City, and the City shall have the option to pay any necessary premiums and charge the cost back to the IDA.

If any insurance shall be provided on a "claims made" basis, all such policies shall provide that:

- (1) Policy retroactive dates coincide with or precede the contractors' start of the performance of the Pre-development Activities (including subsequent policies purchased as renewals or replacements); and
- (2) Prompt notice shall be given to the City of circumstances or incidents that might give rise to future claims with respect to the Pre-development Activities.

In the event that any contractor or subcontractor of the IDA is unable to fulfill any of the requirements under this subparagraph 8(b), the IDA shall confer with the City prior to engaging said contractor or subcontractor.

The IDA agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

The IDA hereby agrees to defend, indemnify and hold City harmless against any claims, actions and proceedings brought against City arising out of, in connection with and/or relating to Pre-development Activities on the City Property.

- (d) Pursue the re-development of the IDA Property, including but not limited to the Access and Easement Areas, site investigation, remediation and other pre-development activities with New York State DEC and local governmental agencies and other similar applicable parties. The IDA shall provide assistance reasonably requested by Hudson Valley Lighting in obtaining licenses, approvals, permits and other cooperation from local, state, and Federal agencies and local governmental bodies; provided, however, that except as otherwise specifically described herein, the IDA and Hudson Valley Lighting shall have the primary responsibility for obtaining such approvals and cooperation.
- (e) Cooperate with the City and Hudson Valley Lighting in securing additional funding needed to complete the re-development of the IDA Property including the Access and Easement Areas. The IDA shall provide support applications for funding from other sources in the form of letters and resolutions of support.
- (f) The IDA hereby agrees to convey to the City a permanent access easement for construction and maintenance of stormwater facilities over the portion of the IDA Property identified as Zone 1 in Exhibit "A" in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law.
- (g) Provide the City with copies of all draft plans, providing the City with a reasonable opportunity to comment on such plans, and final plans and reports submitted to and approved by DEC and or any other regulatory agencies of the United States or the State of New York pursuant to the Brownfield Cleanup Program and the EDA grant award relating to the Agreement Areas and to the IDA and/or Hudson Valley Lighting's obligations.
- (h) Cooperate with the City in the performance of its obligations pursuant to Paragraph 7.

(i) In the event that, following a period of thirty (30) days after the receipt by the IDA of written notice from the City that the IDA or any Permittee has breached this Agreement in some respect, within which period of time the IDA or any Permittee has the opportunity to cure such breach, the IDA or any Permittee has failed to fulfill any obligation of this Agreement, the IDA or any Permittee shall not oppose, and shall comply with, an applicable order by a court of competent jurisdiction, and shall indemnify, defend and hold the City harmless from any and all Claims that are based exclusively upon, and are derived exclusively from, any such breach of this Agreement and non-compliance with any such court order.

9. **Closing:** The closing of the transfer of title for the easements over the City owned parcel and IDA owned parcel shall occur at or prior to the closing between the IDA and Hudson Valley Lighting. Any and all closings shall be held at a location agreeable to all Parties. At the closing the City shall execute and deliver to the IDA a temporary construction and grading easement in recordable form and the IDA shall execute and deliver to the City a permanent access easement for construction and maintenance of stormwater facilities in recordable form as provided in this Access and Easement Agreement. Each Party shall be responsible for all taxes, assessments and water and sewer rents accrued against its parcels as of the date preceding the closing date for the conveyance. Each Party shall be responsible for all taxes, assessment and water and sewer rents accruing against the conveyed parcels on and after the closing date for such parcels. Each Party shall pay and be responsible for any and all real property transfer and similar taxes.

10. **Authority, Access and Term of Agreement:** The City represents that it is the sole owner of the City Property, and has the authority to grant the access rights and other rights as set forth

in this Agreement, and further represents that, to the best of its knowledge and information, there are no unrecorded liens, encumbrances or rights of others that could affect any Permittee's access to, or right to use, the City Property as provided for herein. The IDA represents that it is the sole owner of the IDA Property, and has the authority to grant the access rights and other rights as set forth in this Agreement, and further represents that, to the best of its knowledge and information, there are no unrecorded, liens, encumbrances or rights of others that could affect the City's access to, or right to use, the IDA Property as provided for herein. This Agreement shall terminate at the later of the closing set forth in paragraph 9 herein or the successful completion of the remediation of the IDA Property through the DEC Brownfield Cleanup program and the final close out of the EDA grant.

10. **Reservation of Claims:** Notwithstanding anything to the contrary contained in this Agreement or otherwise:

- a) In return for the performance of the commitments made and the consideration given in this Agreement, the City and the IDA each agrees to forgo any and all Claims against each of the other Party, so long as such Party is not in breach of this Agreement, as determined pursuant to Paragraph 5 (Dispute Resolution) or any judicial enforcement of any such alleged breach, and has not cured any such alleged breach within thirty (30) days of receipt of a written determination rendered pursuant to Paragraph 5 or any final judicial determination.
- b) The agreement to forgo any and all Claims, as aforesaid, and any other event, document or circumstance including, but not limited to, any order issued by EPA to the City or any agreement with EPA entered into by the City, shall not be considered applicable: (i) to

12. **Enforceability:** Should any provision of this Agreement be deemed unenforceable for any reason, the remainder of this Agreement shall continue in effect so long as the purpose of this Agreement is not nullified by the absence of such provision.
13. **Entire Agreement:** This Agreement reflects the entire agreement among the Parties as to the same subject matter, and, except as otherwise provided in this Agreement, all prior agreements, understandings and commitments are merged with and into and superseded by this Agreement. This Agreement can be amended, including, but not limited to, an expansion of the Agreement Areas for the performance of the Parties' Obligations, restated or supplemented only by a written agreement signed by all Parties. This Agreement may be executed in counterparts, all of which together shall be the original Agreement.
14. **Non-Assignment:** The rights, liabilities and obligations under this Agreement shall not be transferred or assigned by any Party unless each Party shall give prior written consent for such transfer or assignment, except that the IDA may assign some of its rights, liabilities and obligations under this Agreement to Hudson Valley Lighting Inc. or an entity formed by and wholly owned by Hudson Valley Lighting Inc. for the purpose of entry of the IDA Property into the DEC Brownfield Cleanup Program. The City agrees that such assignment shall be without recourse to the IDA for those obligations so assigned; the Assignee shall be responsible for all such assigned obligations of the IDA and the City will release the IDA from such obligations. Consent shall not be unreasonably delayed or withheld.
15. **Headings:** The headings are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have signed

this Agreement below.

Dated: _____

THE CITY OF NEWBURGH, NEW YORK

By: _____
Its:

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, in the year 201_, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

LOCAL LAW NO.: _____ - 2014

OF

**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"**

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' 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" to read as follows:

ARTICLE I.

§ 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 Legal Age 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 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.

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

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 Department 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 February 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 1 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 February 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 shall 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. 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 February 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 was not granted a license in the first year after the effective date of this Chapter because of an ineligible location for an establishment at different eligible location. 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. No 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 may conduct periodic inspections in order to ensure compliance with this Chapter.

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.

§ 276-10 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 February 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.