



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

February 19, 2015

6:00 p.m.

AGENDA

1. Presentations/ Presentaciones:

- a. A presentation by Arcadis Malcolm Pirnie will be given regarding the Long Term Control Plan.

2. Reminders:

- a. A presentation by Acting Chief of Police Daniel Cameron regarding the Crime Prevention Through Environmental Design (CPTED) training.
- b. Comptroller's Report:/Reporte del Contralor:
Monthly Financial Summary/*Resumen Mensual Financiero*

3. Planning and Economic Development
Desarrollo Económico y Planificación

a. Resolution No.()-2015

A resolution authorizing the application by the Newburgh Community Land Bank to the Hudson River Valley Council on behalf of the Greenway Communities Program for a grant for the purpose of designing attractive and productive community green spaces in connection with a project to reactivate vacant lots in the City of Newburgh.

b. Resolution No. ()-2015

A resolution to authorize the conveyance of real property known as 72 Hasbrouck Street (Section 38, Block 3, Lot 61) at private sale to Natalya Fredericks D/B/A Sol Properties for the amount of \$15,000.00.

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

a. Resolution No. ()-2015

A resolution of the City Council of the City of Newburgh supporting the Freedom to Marry

- b. Resolution No. ()-2015
A resolution to sponsor the Newburgh Illuminated Event.

5. Engineering / Ingeniería:

- a. Resolution No. ()-2015
A resolution authorizing the City Manager to accept a proposal and execute an agreement with the Chazen Companies, Inc. for a vapor intrusion analysis of the Department of Public Works building at a cost of \$6,508.00.

6. Discussion / Discusión:

- a. Newburgh Landing Status
- b. Update on the Vacant Registry

7. Executive Session/ Sesión Ejecutiva:

- a. Pending litigation /Litigio pendiente
- b. Collective negotiations under Article 14 of the civil service law.

RESOLUTION NO.: _____ - 2015

OF

FEBRUARY 23, 2015

**A RESOLUTION AUTHORIZING THE APPLICATION BY THE
NEWBURGH COMMUNITY LAND BANK TO THE HUDSON RIVER VALLEY
COUNCIL ON BEHALF OF THE GREENWAY COMMUNITIES PROGRAM FOR A
GRANT FOR THE PURPOSE OF DESIGNING ATTRACTIVE AND PRODUCTIVE
COMMUNITY GREEN SPACES IN CONNECTION WITH A PROJECT TO
REACTIVATE VACANT LOTS IN THE CITY OF NEWBURGH**

WHEREAS, the Newburgh Community Land Bank proposes to apply to the Hudson River Valley Greenway on behalf of the City of Newburgh for a grant under the Hudson River Valley Greenway Grant Program for a project entitled Reactivating Vacant Lots in Newburgh to be located in the City of Newburgh; and

WHEREAS, the Newburgh Community Land Bank, in partnership with Groundwork Newburgh and One Nature, a landscape architecture firm that specializes in restorative ecology and stormwater mitigation projects, proposes to design attractive green spaces that utilize native plants, mitigate stormwater issues, and provide gathering spaces for local events; and

WHEREAS, the grant application requires the applicant municipality to obtain the approval/endorsement of the governing body of the municipality or municipalities in which the project will be located; and

WHEREAS, the City of Newburgh supports and designates the Newburgh Community Land Bank for the oversight and management of this project and understands that the Newburgh Community Land Bank will outlay all funds, including any match required under the parameters of the proposed project; and

WHEREAS, this Council has determined authorizing and supporting the Newburgh Community Land Bank to make such application is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh hereby does approve and endorse the application for a grant under the Hudson River Valley Greenway Grant Program, for a project known as Reactivating Vacant Lots in Newburgh and located within the City of Newburgh.

RESOLUTION NO.: _____ - 2015

OF

FEBRUARY 23, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN
AS 72 HASBROUCK STREET (SECTION 38, BLOCK 3, LOT 61)
AT PRIVATE SALE TO NATALYA FREDERICKS D/B/A SOL PROPERTIES
FOR THE AMOUNT OF \$15,000.00

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real property Tax law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the City of Newburgh desires to sell 72 Hasbrouck Street, being more accurately described as Section 38, Block 3, Lot 61 on the official tax map of the City of Newburgh; and

WHEREAS, the prospective buyer has offered to purchase this property at private sale; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to sell said property to the prospective buyer for the sum as outlined below, and upon the same terms and conditions annexed hereto and made a part hereof,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before April 24, 2015, being sixty (60) days from the date of this resolution; and

| <u>Property address</u> | <u>Section, Block, Lot</u> | <u>Purchaser</u> | <u>Purchase Price</u> |
|-------------------------|----------------------------|--------------------------------------------|-----------------------|
| 72 Hasbrouck Street | 38 - 3 - 61 | Natalya Fredericks d/b/a Sol Properties | \$15,000.00 |

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions Sale

72 Hasbrouck Street, City of Newburgh (38-3-61)

STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. Upon the closing, the property shall become subject to taxation and apportionment of the 2015 City and County taxes and 2014-2015 School Taxes shall be made as of the date of closing. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
7. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
8. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such

conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.

9. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before April 24, 2015. The purchaser's obligation to close is subject to the purchaser obtaining a survey meeting the requirements of Term No. 14 and a title insurance policy. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
10. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
11. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
12. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
13. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
14. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least ten (10) days in advance of closing title and approved by the City's Engineer.
15. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
16. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: _____ - 2015

OF

FEBRUARY 23, 2015

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF NEWBURGH SUPPORTING THE FREEDOM TO MARRY**

WHEREAS, The City of Newburgh, New York has long stood for full equality for same-sex couples; and

WHEREAS, since the time New York State passed the freedom to marry, support for marriage for same-sex couples has grown to nearly 59 percent nationwide; and

WHEREAS, today, thirty-seven states plus the District of Columbia have now ended discrimination in marriage, so that now 72 percent of Americans live in a state where same-sex couples can marry; and

WHEREAS, there continues to be an untenable patchwork imposing great legal uncertainty and hardship on committed same-sex couples in the 13 states that deny the freedom to marry and refuse to respect their lawful marriages, even as the federal government rightly treats these couples as married for federal programs and purposes; and

WHEREAS, that patchwork means that residents of freedom to marry states like New York face uncertainty about the level of respect accorded their marriage when visiting another state; and

WHEREAS, 60 different rulings in state and federal courts have found in favor of marriage for same-sex couples, clearly demonstrating that the country is ready for the freedom to marry; and

WHEREAS, in 2013 the U.S. Supreme Court struck down the core of the so-called Defense of Marriage Act, and in so doing eviscerated justifications for excluding same-sex couples from marriage; and

WHEREAS, on January 16th, 2015, the U.S. Supreme Court agreed to hear cases brought by plaintiffs from four different states - Kentucky, Michigan, Ohio and Tennessee - with a final decision anticipated by June 2015; and

WHEREAS, every day of denial is a day where American families are harmed and as a result, it is time for the Supreme Court to put an end to this injustice;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, NY affirms its support of the freedom to marry for same-sex couples and urges the U.S. Supreme Court to speedily bring national resolution by ruling in favor of the freedom to marry nationwide.

RESOLUTION NO.: _____ - 2015

OF

FEBRUARY 23, 2015

**A RESOLUTION TO SPONSOR THE
NEWBURGH ILLUMINATED EVENT**

WHEREAS, the Newburgh Illuminated Festival will be held on June 20, 2015; and

WHEREAS, the Newburgh Illuminated Festival is an event designed to celebrate the rich history of the City and the residents that reside here, and to celebrate the City's 150th Anniversary, thus resulting in increased tourism and positive regional perception; and

WHEREAS, the organizers of the Newburgh Illuminated Festival have requested that the City Council support the Festival as a City-sponsored event; and

WHEREAS, this City Council finds that supporting the Newburgh Illuminated Festival as a City-sponsored event is in the best interests of the residents of the City of Newburgh and that cooperation with the City departments such as Department of Public Works, City Police Department and others as needed to partner with the Festival organizers provides the greatest opportunity for success;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York hereby supports and sponsors the Newburgh Illuminated Festival as a City-sponsored event and that such sponsorship be limited to providing insurance coverage for the event.

RESOLUTION NO.: _____ - 2015

OF

FEBRUARY 23, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH
THE CHAZEN COMPANIES, INC. FOR A VAPOR INTRUSION ANALYSIS OF THE
DEPARTMENT OF PUBLIC WORKS BUILDING AT A COST OF \$6,508.00**

WHEREAS, the City of Newburgh procured a proposal under the Emergency Procurement provisions of the Procurement Policy of the City of Newburgh from The Chazen Companies, Inc. for a vapor intrusion analysis of the Department of Public Works Building located at 88 Pierces Road; and

WHEREAS, the proposal includes sampling, evaluation, inspections and a report; and

WHEREAS, the cost for these services will be \$6,508.00 and such funding shall be derived from _____ ; and

WHEREAS, the work has been completed and the City Council has determined that such work is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with The Chazen Companies, Inc. for a vapor intrusion analysis of the Department of Public Works Building at a cost of \$6,508.00.



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www.chazencompanies.com

Capital District Office (518) 273-0055

North Country Office (518) 812-0513

December 23, 2014

Jason C. Morris, PE

City Engineer

83 Broadway

Newburgh, New York 12550

Re: City of Newburgh Landfill, DPW Building SVI Evaluation

Proposal # PM14-126

Dear Mr. Morris:

The Chazen Companies (Chazen) appreciates the opportunity to assist the City of Newburgh with a vapor intrusion evaluation at the DPW building on Pierces Road. Based on a preliminary document review, select phthalates were detected in soil borings collected adjacent to the structure.

The tasks proposed below outline a vapor intrusion assessment we have discussed to screen whether phthalates and Volatile Organic Compounds (VOCs) including gasoline constituents and many solvents may be entering the DPW working spaces from under the building floor slab.

Task 1 - Field Effort:

1. Chazen will set up three indoor air sampling stations in areas agreed upon with the client team, potentially including a vehicle bay and two general work areas.
2. Chazen will establish one outdoor reference air sampling station to allow interpretation of indoor vapor versus ambient local air.
3. Chazen will set up two below-floor slab sampling stations for soil vapor collection. The City will pre-drill sampling holes through the concrete floor, potentially under the east and west portions of the building.
4. Sampling canisters will be programmed to draw air over an 8-hour period, consistent with a typical work day. During this period, windows and doors should be closed and any heating or ventilation systems should be operating normally. Once the 8-hour sampling period begins, Chazen will conduct a visual building inventory of potential chemical sources and also evaluate the property to better understand geometry and condition of the parcel.
5. Chazen will gather the sampling canisters after 8 hours and ship samples to lab for analysis. Selected analyses are: T0-15 full VOC scan and phthalates per USEPA method NMAM5528. Lab costs include ASP B deliverables in case the City desires data validation in the future.

Task 2 - Analysis and Report:

1. Chazen will review results and provide a draft letter report to the City for discussion. Chazen professionals will spend up to one day researching an initial interpretation of the significance of findings.
2. Chazen will be available for one team teleconference to discuss preliminary findings.
3. Chazen will finalize our letter report.

Professional Services Fee Schedule

Chazen proposes to bill each task as indicated in the following Fee Schedule. Invoices will be issued monthly for all services performed during that month, and are payable upon receipt. Lump Sum tasks will be billed according to milestone completions for each deliverable, or commensurately with the percentage of the task which has been completed. Chazen will contact you if unexpected circumstances arise outside of our control which might change our required scope of work. We do not anticipate any such conditions.

Task, Fee and Time Schedule Summary

| Tasks | | Fee Estimates | | |
|----------------------|---------------------|-------------------|---------------------------|-----------------|
| Task No. | Task Description | Lump Sum Fee Bill | Time & Materials Estimate | Laboratory Fees |
| 001 | Field Effort | \$1,400 | --- | \$3,008 |
| 002 | Analysis and Report | \$2,100 | --- | --- |
| Totals | | \$3,500 | --- | \$3,008 |
| Total Estimated Cost | | \$6,508 | | |

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. This proposal is good for 30 days.

Sincerely,



Russell Urban-Mead, CPG
Senior Hydrogeologist/VP Environmental Service

RUM/enclosure

cc: file

Project Name: _____

Project Number: _____

AGREEMENT MADE this 6th day of January 2015 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, NY (hereafter referred to as "Client").

1. **PURPOSE:** Client hereby retains Chazen to perform the services described in the Proposal For Professional Services dated December 23, 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.
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.

Professional Services Agreement

Proposal Number: PM14-126

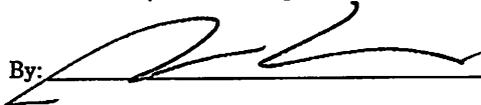
Project Name: _____

Project Number: _____

- 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 City of Newburgh, NY

THE CHAZEN COMPANIES

By: 

By: 

Printed Name: Michael Ciaravino, City Manager

Printed Name: Glen Gay

Date: December 24, 2014

Date: 1/6/15