

A regular meeting of the City Council of the City of Newburgh was held on Monday, September 12, 2011 at 7:00 P.M. in the Council Chambers at City Hall, 3rd Floor, 83 Broadway, Newburgh, New York 12550

The Prayer was led by Mayor Valentine. He asked that we think about the safety of the youth and the huge task that families face in raising children today in a difficult environment.

The Pledge of Allegiance was led by Councilwoman Bell.

Present: Mayor Valentine, presiding; Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard- 5

Councilwoman Angelo moved and Councilwoman Bello seconded that the minutes of the regular meeting of August 8, 2011 be approved.

Ayes-Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine- 5

CARRIED

Councilwoman Angelo moved and Councilwoman Bello seconded that the minutes of the emergency meeting of September 8, 2011 be approved.

Ayes-Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Mayor Valentine- 4

No- Councilman Dillard-1

CARRIED

REPORTS

Councilwoman Angelo moved and Councilwoman Bello seconded that the City Clerk's Report, the Registrar of Vital Statistics Report and the Civil Service Administrator's Report for the month of August be received, filed and made available to the Press.

Ayes-Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine- 5

CARRIED

PROCLAMATION

Mayor Valentine proclaimed September 26, 2011 *Family Day*- a day to eat dinner with your family.

COMMUNICATIONS

Councilwoman Angelo moved and Councilwoman Bello seconded that the Small Claims Assessment Review petitions, the Notice of Application to Review Tax Assessment, the Notice of Pendency of Action, the Notice of Intent to File a Claim, the Notices of Petition and Petitions, and the Notices of Claims be referred to Corporation Counsel with power to act.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine- 5

CARRIED

City of Newburgh

Proclamation

Family Day – A Day to Eat Dinner with Your Children™

The use of illegal and prescription drugs and the abuse of alcohol and nicotine constitute the greatest threats to the well-being of America's children; and

The National Center on Addiction and Substance Abuse (CASA)
At Columbia University has consistently found that
The more often children and teenagers eat dinner with their families
The less likely they are to smoke, drink and use illegal drugs.

Mealtime has routinely served as an opportunity for families
To gather and stay connected; and continues to provide a basic structure
To strengthen and encourage lasting relationships.

Now, therefore, I, Mayor Nicholas J. Valentine do hereby proclaim

September 26, 2011

Family Day – A Day to Eat Dinner with Your Children™

In the City of Newburgh

NICHOLAS J. VALENTINE, MAYOR

PROPOSED PUBLIC HEARING

RESOLUTION NO.:162- 2011

OF

SEPTEMBER 12, 2011

**RESOLUTION SCHEDULING A PUBLIC HEARING
FOR SEPTEMBER 26, 2011 TO HEAR PUBLIC COMMENT
CONCERNING A LOCAL LAW AMENDING SECTION C 3.00 OF THE CITY
CHARTER ENTITLED “MUNICIPAL OFFICERS ENUMERATED” WITHIN
THE CODE OF THE CITY OF NEWBURGH**

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning a Local Law amending Section C 3.00 of the City Charter entitled “Municipal Officers Enumerated” within the Code of the City of Newburgh; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 26th day of September, 2011, in the 3rd Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

LOCAL LAW NO.: _____ - 2011

OF

A LOCAL LAW AMENDING CITY CHARTER SECTION C3.00
ENTITLED "MUNICIPAL OFFICERS ENUMERATED"
OF THE CODE OF THE CITY OF NEWBURGH

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

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Charter Section C 3.00 entitled "Municipal officers enumerated" of the Code of the City of Newburgh".

SECTION 2 - AMENDMENT

City Charter Section C 3.00 entitled "Municipal officers enumerated" of the Code of the City of Newburgh is hereby amended to read as follows:

§ C3.00. Municipal officers enumerated. The officers of the City or municipality shall be as follows:

D. The provisions of this section or of § 3 of the Public Officers Law of the State of New York or of any other provisions of law requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he shall be chosen or within which his official functions are required to be exercised shall not apply to the appointment of the officers of the City of Newburgh enumerated in Subsections B and C of this section and the City Marshal, except the City Manager; the Plumbing Inspector, as to whom preference shall be given to City residents, but if, after due diligence, no such qualified candidate is found, then such Plumbing Inspector may reside within 25 miles of the City of Newburgh; and the members of the Civil Service Commission, provided that such appointed officers reside within 25 miles of the City of Newburgh or within the County of Orange.

SECTION 3 - VALIDITY

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

Underlining denotes additions

SECTION 4 - EFFECTIVE DATE

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

DRAFT

PUBLIC HEARING

Mayor Valentine called a public hearing concerning the adoption of the proposed City of Newburgh Future Land Use Plan as a component of the Sustainable Master Plan. (*Note: The first public hearing was held on May 23, 2011*)

Sarah Yackel, a consultant with BFJ Planning, provided the audience with a brief overview of where we are with this. As we all know, the City of Newburgh Master Plan, which was adopted in December of 2008, did not contain a land use plan element. She was here in May. They have gone back and made some minor revisions since then. Also the Environmental Assessment form, Part I, has been submitted. Now they can move on to Part II. She has been working with committee members and staff to develop a future opportunities map highlighting the areas in Newburgh that have the most potential for growth.

One area that was amended since the previous public hearing was the Armory site, which was originally reflected as "Institutional". They are recommending that that category be changed to "Institutional Commercial/Recreational". It is understood that the site can be used for a combination of uses, and we want to allow maximum flexibility at the site.

Next, she mentioned that someone had suggested earlier that it would be logical to make properties along the west side of Robinson Avenue commercial too. Though she agrees with the suggestion, considering the way the parcels are split up on that lot, the only way to make that change on a map is to make the entire street commercial. These were really the only two major comments. Also these were the areas in which they have made intensive zoning recommendations in the plan. She concluded the presentation with a brief discussion of the approval process.

Denise Ribble, Montgomery Street, pointed out some of the opportunity areas on Page 15 of the Land Use Plan. Perhaps one recommendation is the Platinum/Gold/Silver designation so that the land use document might actually help to get the ball rolling into getting some of those ideas to change. Second, she notices that the Newburgh Harbor Management area is not listed in the Opportunities Area section of the plan. This section only talks about consistency with the LWRP for the waterfront area. Yet the LWRP is larger than just the waterfront area. Also Sections 3.2.11 needs to be more descriptive.

She noticed there is discussion about lower Broadway, but does not include Colden Street, which is also in the LWRP area. We need to look at the

ownership of that area between Grand and Colden streets. She does not think we own that area any longer. This could have some implications for the parking meters that we want to put there, as well as other stuff. Ultimately, she was happy to see that the zoning recommendations are consistent with the rest of the document. Last, she mentioned we may want to include pawn shops into the section entitled "Inclusion and Regulation of New Sometimes Controversial Uses" on Page 29.

Councilwoman Angelo asked if the South Robinson properties are only those situated beyond the Recreation Park.

Sarah Yackel affirmed. Also she pointed out that once this is adopted and becomes part of the Master Plan, it would have to be consistent with the LWRP too. She feels confident in that it is covered under the existing Master Plan and under state law, in terms of coastal consistency.

Corporation Counsel Michelle Kelson pointed out there are two versions of Resolution #172-2011 before the council tonight. It is up to the council to decide which one it wants to adopt.

There being no one else wishing to speak for or against this public hearing, this portion of the meeting was closed.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Denise Ribble asked if we are going to apply for FEMA (Agenda Item #33). Second, she suggested that if the resolution is adopted tonight, the council should provide an update on the HUD Section 3 portions of the bid to ensure we are following it (Item #34). Third, she supports Resolution #185-2011 (Item #41). Finally a clearer explanation in terms of what are the tax certiorari proceedings with Central Hudson is needed (Item #42).

Kippy Boyle, Grand Street, asked what are the scope of the services and the associated costs of services. She wanted to know how long CT Male Associates is going to be working on the project. Is it CDBG funding from FY 2012 (Item #34)? Second, discussion surrounding 288 Grand Street was not on work session. Since it concerns taxes she would like more information (Item #38). Third, she recalled a presentation made by Workforce Development Institute, which stated that Phase I would begin in January. The time table is not clear. When does the program begin? Since they do not have an office here, she would like to know where potential candidates go to get services. Essentially how do we measure the success rate of the organization (Item #41)? Lastly, discussion surrounding the tax certiorari proceedings was not on the work session (Item #42).

Mayor Valentine responded that both settlements were discussed in executive session (Item #38 & #42). Phase I would begin when the resolution is passed and the council enters into the agreement with WDI. Phase II is slated to start in January. Also the local representative that was present last week shares office space with Greater Hudson Valley Area Labor Federation (Item #41).

Councilwoman Bell pointed out that part of what WDI does is builds on connections and relationships with providers in the area. The resources are positioned in local settings, so that the people can access them without having to go all the way to Rock Tavern.

Maryann Prokosch, Galloway Avenue, stated she has heard that WDI has had a 64% success rate in terms of people staying in jobs for more than 90 days. But no one ever mentioned how many people would receive jobs. Are we able to provide some type of measurement of the organization's success rate?

Councilwoman Bell pointed out that WDI is contracted by New York State because of its high success rate. She urged those with concerns to check the organization's website. You will be able to track WDI's success over a long period of time and over several major cities within New York State. We are

fortunate to be able to get this going. As we are aware, in Washington the focus of everything has been on job development. We certainly need to get out ahead of the pitch in terms of getting people prepared.

Janet Gianopolous commented that she has discovered that we have several resources right here in the City of Newburgh that taxpayers are paying for already. Many resources are in danger of losing funding. She is afraid that if we fragment resources and do not use what we have, then we could lose them altogether. Resources, such as Orange Works, are located right here in Newburgh. Before we spend \$29,000 she would like to know how many people are patronizing the resources that exist here already.

Judy Kennedy wanted to clarify that \$29,500 is for a current state of assessment. She understands that this first phase is the fact-finding process. Do we have anything on the budget line for the second phase? She wants assurance that if we are going through with this, then there should be a plan. She has done a lot of gap analysis in her lifetime. She understands that the resources available now may be fragmented or not very accessible. But we need to ensure that the program does not impact the budget in a negative way

Councilwoman Bell stated she believes the work is going to be funded through grants. The push in Washington is on workforce development. And with that, more grant opportunities will arise. This is a good thing. Finally we will be ahead of the curve instead of waiting until after it is all over. We are in a position now to be on the cutting edge.

There being no further comments, this portion of the meeting was closed.

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

There were no comments at this time.

RESOLUTION NO.: 163 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AMENDING RESOLUTION NO.: 40-2011
OF FEBRUARY 28, 2011 WHICH AUTHORIZED THE CITY MANAGER
TO EXECUTE AN AGREEMENT WITH THE COUNTY OF ORANGE
TO PROVIDE FOR REIMBURSEMENT OF FUNDS TO
THE CITY OF NEWBURGH WITH RESPECT TO CERTAIN
URBAN RENEWAL PROJECTS FOR THE PERIOD
OF JANUARY 1, 2011 TO DECEMBER 31, 2011**

WHEREAS, the City Council has by Resolution No.: 40-2011 of February 28, 2011 authorized the City Manager to execute an agreement with the Orange County Department of Public Works (hereinafter "County") to provide for reimbursement of funds to the City of Newburgh (hereinafter "City") with respect to certain urban renewal projects for the period of January 1, 2011 to December 31, 2011 in the amount of Fifty Thousand (\$50,000.00) Dollars; and

WHEREAS, the County has notified the City that the amount of the agreement to provide for the funding of certain urban renewal projects within the City for the year 2011 is now Thirty Thousand (\$30,000.00) Dollars;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the attached agreement with the County of Orange to provide for a total annual sum not to exceed Thirty Thousand (\$30,000.00) Dollars in order to obtain the available funding for certain urban renewal projects, pursuant to the 2011 Budget as follows:

Revenue Account A.0000.2560

Expense Account A.5110.0412

Mayor Valentine pointed out we lost \$20,000 out of this year's budget. That is a lot of money in a city that does not have it. The trickle down effect of funding amazes him. Orange County has a strong finance department and there is much fund balance. Obviously we rely on that funding that comes from things, such as sales tax. But it is one of those red flags that go up. The effect is seen when we have to tell our department heads that they have less funds to work with in order to carry out day-to-day operations.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 164 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION WHICH AUTHORIZES THE AWARD
OF A BID AND THE EXECUTION OF A CONTRACT WITH
ENTERPRISE NETWORK RESOLUTIONS CONTRACTING, LLC
IN CONNECTION WITH THE SITE CLEARING, MINOR DEMOLITION,
CAPPING INFILTRATION TRENCH CONSTRUCTION, EXCAVATION
AND INTERIOR TRENCH CLEAN OUT AT CITY OWNED
PROPERTY LOCATED AT 86 WISNER AVENUE AND KNOWN AS
THE JONAS AUTOMOTIVE SITE AND TO ESTABLISH THE BUDGET
FOR SUCH PROJECT IN AN AMOUNT NOT TO EXCEED \$251,251.00**

WHEREAS, the City of Newburgh is the owner of real property located at 86 Wisner Avenue (Section 26, Block 1, Lot 59.1) and known as the Jonas Automotive Site; and

WHEREAS, it is necessary to commence certain project work at the site; and

WHEREAS, such project involves site clearing, minor demolition, capping infiltration trench construction, excavation and interior trench clean out; and

WHEREAS, the City of Newburgh has duly advertised for bids for the Jonas Automotive Site Project; and

WHEREAS, bids have been duly received and opened; and

WHEREAS, the City of Newburgh wishes to award the bid for a contract for such work to Enterprise Network Resolutions Contracting, LLC; and

WHEREAS, the New York State Department of Environmental Conservation has approved of the City of Newburgh's award of the remediation contract to Enterprise Network Resolutions Contracting, LLC, based on their review of the contractor's bid documents in relation to the Department's Municipal Assistance for Environmental Restoration Projects Section 8.2; and

WHEREAS, such project shall be at a base cost of \$228,410.00 plus ten (10%) percent contingency costs for a total project cost of \$251,251.00; and

WHEREAS, funding for such project will be derived from the 2009 Bond Authorization H1.1440.0215.5401.2010; and

WHEREAS, a portion of the project costs are reimbursable under the DEC Environmental Restoration Program; and

WHEREAS, this Council has determined that entering into a contract for such work 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 bid for the Jonas Automotive Site Project be and it hereby is awarded to Enterprise Network Resolutions Contracting, LLC, for the base bid amount of \$228,410.00 plus ten (10%) percent contingency costs for a total project cost of \$251,251.00; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to enter into a contract for such work in this amount.

Councilman Dillard asked from where are getting this \$251,000.

Director of Planning and Development Ian MacDougall explained that this is part of the Environment Restoration Program in which the city is reimbursed 90% of the work performed on the site. The money itself is coming from a BAN that Craig Marti worked on in 2009. When the DEC signs off on it, we are then in a position to sell the property.

Councilman Dillard recalled the Consolidated Iron project, in which it was stipulated that we couldn't sell the property for more than what we invested. He asked if this was the same type of program.

MacDougall clarified that it is not the same program, yet it is similar in that if we end up making more than what we put in, then New York State will be seeking a return on some of its investment. This is why we have to establish a sale price with the state.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 165 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION MEMORIALIZING THE CITY OF NEWBURGH'S
PARTICIPATION IN THE OPTIONAL TWENTY YEAR RETIREMENT PLAN
FOR CERTAIN POLICE OFFICERS AND FIREFIGHTERS,
PURSUANT TO SECTION 384-d OF THE RETIREMENT
AND SOCIAL SECURITY LAW**

BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City of Newburgh does hereby assume the additional cost required to provide the reopening of Section 384-d of the Retirement and Social Security Law, pursuant to Chapter 434 of the Laws of 2011.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 166 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE AN AGREEMENT WITH LOOMIS ARMORED US, LLC
TO PROVIDE FOR ARMORED CAR SERVICE**

WHEREAS, the City of Newburgh has requested proposals for Armored Car Services; and

WHEREAS, proposals have been duly received and reviewed and it has been determined that Loomis Armored US, LLC (“LOOMIS”) has submitted the proposal that would most benefit the City of Newburgh; and

WHEREAS, a copy of the Request for Proposals and the agreement with LOOMIS is attached hereto and made a part of this resolution;

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 enter into an agreement with Loomis Armored US, LLC to provide Armored Car Services in accordance with the attached proposal with all such terms and conditions as may be required by the Corporation Counsel.

Councilman Dillard stated he is still not clear why we are hiring armored car services for the deposit of money to locations that are less than 3 miles away.

City Comptroller Cheryl Gross stated that the way it is done now, staff is escorted by a police officer to deposit money at the bank. This takes a police officer off duty and more importantly off the streets. Also it takes an employee out of the office and away from his work to complete a process that takes almost an hour everyday. The cost of these services is \$26 a day, which is much less than the cost of having a seasoned police officer that happens to be assigned that day. Also the liability on the city is lessened because now you don't have another person in the vehicle should there be an accident while performing professional duties.

Councilwoman Bello asked what is wrong with using a night drop box. Then we would not have to wait for a bank teller to process the transactions.

The comptroller responded she did not have the answer to that question. It is something that could be used but transportation remains an issue. And even if a police officer did do the night drop either her office or the tax collector's office would still have to sign the funds over to that officer.

Councilwoman Bello moved and Councilwoman Angelo seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED



City of Newburgh
City Comptroller's Office

City Hall - 83 Broadway
Newburgh, New York 12550

Tel. (845) 569-7316
Fax (845) 569-7498

Anna Marie Calli
Acting City Comptroller and Senior Account Clerk
Email: acalli@cityofnewburgh-ny.gov

FILE COPY

NOTICE
REQUEST FOR PROPOSALS
FOR
ARMORED CAR SERVICES

CITY OF NEWBURGH, NEW YORK

Requests for Proposals will be received by the Acting City Comptroller in her office at City Hall, 83 Broadway, 4th Floor, Newburgh, New York until 11:00 a.m., prevailing time, Tuesday, December 21, 2010 for Armored Car Services for the City of Newburgh, New York.

Specifications may be obtained by contacting Elizabeth Garrison, Administrative Assistant to the City Comptroller, in the Comptroller's Office at (845) 569-7316 or via email at garrison@cityofnewburgh-ny.gov.

Proposals shall be delivered to the City of Newburgh Acting City Comptroller by hand, mail or other courier type services on or before specified time for delivery. Facsimile or electronic mail submittals will not be accepted. Proposals received after the specified due date and time will not be accepted. Bidders on Contracts are required to execute a Non-Collusive Bidding Affidavit pursuant to Section 103d of the General Municipal Law of the State of New York.

The City of Newburgh hereby notifies all vendors that it will affirmatively insure that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the ground of race, color or national origin in consideration of an award.

The City of Newburgh reserves the right to reject any or all proposals. Contract award may be subject to approval by City Council.

Anna Marie Calli
Acting City Comptroller/Sr. Account Clerk

/edg

ADVERTISE: Hudson Valley Black Press, Wednesday, December 15, 2010
Mid Hudson Times, Wednesday, December 15, 2010
The Sentinel, Tuesday, December 14, 2010

"AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER"

REQUEST FOR PROPOSALS
FOR
ARMORED CAR SERVICES

Proposal Number 16.10
December 14, 2010

1. PURPOSE

- 1.1 The City of Newburgh (hereinafter referred to as City) hereby requests proposals to provide Armored Car Services to the City. Vendors submitting a Proposal must have demonstrated experience in providing Armored Car Services to other municipalities in New York State. The City is an Affirmative Action – Equal Opportunity Employer. Minority Business Enterprises and Women's Business Enterprises are encouraged to submit Proposals.

2. SUBMISSION OF PROPOSALS

- 2.1 Interested Vendors shall submit one (1) original plus four (4) copies of their Proposal to Acting City Comptroller in her office by hand, mail or other courier type services no later than **11:00 a.m., local time, Tuesday, December 21, 2010** in a sealed envelope with the Vendor's name and address on the outer envelope along with the words "**RFP for Armored Car Services**" clearly marked on the envelope. Only those Proposals received by the specified deadline will be accepted. Facsimile or electronic mail submissions will not be accepted. Proposals shall be submitted to:

Attn: Anna Marie Calli, Acting City Comptroller
City of Newburgh – City Hall
83 Broadway – 4th Flr.
Newburgh, New York 12550

- 2.2 Vendor shall submit a detailed description of their proposed Armored Car Services for the City.
- 2.3 Vendor shall cite the rates proposed to City for Armored Car Services as set forth in Section 6.1.1 herein.
- 2.4 It is the responsibility of the Vendor to assure that its Proposal arrives at the designated location by the specified time stated above.
- 2.5 Each Proposal submitted will be the document upon which the City will make its initial judgment regarding each Proposer's qualifications, methodology and ability to provide the requested services.
- 2.6 Those submitting Proposals do so entirely at their own expense. There is no express or implied obligation by the City to reimburse any business or individual for any costs incurred in preparing or submitting Proposals, preparing or submitting additional information requested by the City or participating in any selection interviews.

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

- 2.7 Submission of any Proposal indicates an acceptance of the conditions contained in this Request for Proposals unless the submitted Proposal clearly and specifically states otherwise.
- 2.8 The City reserves the right to accept or reject any and all Proposals in whole or in part, to waive any and all informalities, and to disregard all non-conforming, non-responsive or conditional Proposals.
- 2.9 Any and all awards made for Armored Car Services are subject to approval by the City Council and TD Bank.

3. QUALIFICATIONS

- 3.1 Each Proposal shall contain a statement of qualifications as set forth below. It is requested that this information be submitted in the order listed to facilitate the City's review.
 - 3.1.1 A brief history and description of the business submitting the Proposal.
 - 3.1.2 Identification of the Vendor's key professional staff members who will be assigned to this engagement should such Vendor's Proposal be selected.
 - 3.1.3 A signed cover letter from an employee from Vendor's business who is authorized to make representations on behalf of the business and to bind the business.
 - 3.1.4 A summary of the Vendor's general experience in providing Armored Car Services to other municipalities and any specific experience in providing said services to municipalities in New York State. Submit at least five (5) references of current New York State municipal government clients, including contact names, addresses and telephone numbers.
 - 3.1.5 A detailed list of any exceptions to the Scope of Services outlined in Section 4 of this RFP that the Vendor cannot perform. Scope of Services shall be made part of the Contract between the City and the successful Vendor. Vendor is free to submit alternative suggestions for performing any of the services included in Section 4 together with a cost/benefit analysis of why this suggestion should be considered by the City.
 - 3.1.6 Any additional information which would serve to distinguish the business from other businesses submitting Proposals.
- 3.2 The City may make such inquiries it deems necessary to determine the ability of each proposer to perform the services contemplated by this RFP. Vendors shall promptly furnish all information and data for this purpose as may be subsequently requested by the City.
- 3.3 The City shall award one (1) contract for Armored Car Services to one (1) Vendor.

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

4. SCOPE OF SERVICES

- 4.1 GENERAL: The intent of this Request for Proposal is to obtain Armored Car Services for the delivery of deposits from the City to our bank – TD Bank located in the City of Newburgh. Following are the current locations:

<u>FROM:</u> City Of Newburgh Collector's Office City Hall – 1 st Floor 83 Broadway Newburgh, NY 12550	<u>TO:</u> TD Bank 800 Broadway Newburgh, NY 12550
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4.2 SCOPE OF WORK

The vendor will be responsible for all of the following service requirements:

- 4.2.1 All armored car pick up services will need to occur Monday through Friday throughout the year. Pick up service will be between 12 p.m. and 3:00 p.m., local time. An actual pick up schedule will be negotiated with the successful Vendor selected. For Vendors' information in submitting a Proposal, a list of Holidays is set forth below. Exceptions for daily pick up services would include the following City and/or Bank holidays, but not limited to:

- 1) New Years Day
- 2) Martin Luther King Jr. Day
- 3) President's Day
- 4) Memorial Day
- 5) July 4th
- 6) Labor Day
- 7) Veteran's Day
- 8) Thanksgiving Day
- 9) Christmas Day

- 4.2.2 Credits shall be issued by the Vendor to the City for any delivery exceptions when:

- 1) City notifies Vendor 24 hours or more in advance that pick up is not required. For example, City makes the decision to close for whatever reason.
- 2) When pick up does not occur on a scheduled day by no fault of the City. For example, if Vendor has any issues with vehicle(s), weather, traffic or personnel.

- 4.2.3 Successful Vendor shall provide certificates of insurance in accordance with the laws in the State of New York. In addition, Vendor shall provide proof of insurance that bonds their employees and shall be responsible for the full ✓

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

value of all City property and deposits while in their possession. Carrier shall be responsible for all loss of money.

4.2.4 Vendor shall return deposit slips to the City the next business day.

5. CONTRACT

5.1 The successful Vendor will be required to execute a written contract with the City. A sample City Professional Services Agreement is available upon request. The contract period for the services contemplated by this RFP shall be for on calendar year. The City wishes to commence services with successful Vendor on or about January 1, 2011 and continue through December 31, 2011 with the opportunity for renewal for an additional second, third, fourth and fifth year, 12-month renewal periods upon agreement by both parties.

6. COST PROPOSAL

6.1 PAYMENT

6.1.1 Vendors shall submit Proposals citing rates as follows:

- a. Fixed annual rate to be paid monthly. MONTH
- b. Rate per daily run with same day delivery. - \$22.00 per TRIP \$476.30
- c. Rate per daily run with next day delivery. - \$20.00 per TRIP \$433.00

6.1.2 Prices shall be fixed and remain firm through December 31, 2011.

6.1.3 Vendor shall invoice the City Comptroller's Office for charges incurred monthly as follows:

- a. Invoice shall indicate daily charge multiplied by the number of pick up days.
- b. Invoice shall list dates of actual pick up service.
- c. Invoice shall list all dates for credit amounts.

6.1.4 If City cancels a scheduled deposit run, please explain Vendor's intent on City for cancellation.

7. EVALUATION OF PROPOSALS

7.1 Proposals shall remain firm for 60 days from date of receipt and opening specified under Section 2 of this RFP or December 31, 2010, whichever comes first.

7.2 Proposals shall be examined and evaluated by the City's Corporation Counsel Office to determine whether each Proposal meets the requirements of this RFP. A recommendation may be made to City Council for a contract award based on the following criteria:

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

- 7.2.1 Vendors' demonstrated capabilities, professional qualifications and experience in providing armored car services;
 - 7.2.2 The wherewithal of the Vendor to render the requested services to the City in a timely fashion;
 - 7.2.3 Total proposed cost; and,
 - 7.2.4 Responsiveness and completeness of the Proposal.
- 7.3 Selection of a Proposal will not be based solely on a monetary evaluation. Considerable weight will be given to experience in the areas required and the track record of the Vendor with other municipal governments.

8. ALTERNATIVES

- 8.1 Proposals may include alternative service methods not requested in this RFP. However, all such alternative must be listed separately in the Proposal and as well as the associated cost(s) thereof itemized.

9. INDEMNIFICATION

- 9.1 The selected Vendor will be required to defend, indemnify, and hold harmless the City, and TD Bank, their employees and agents, from and against all claims, damages, losses and expenses including - without limitations - reasonable attorney's fees arising out of, or in consequence of, any negligent or intentional act or omission of the selected proposer, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses, and expenses.

10. SPECIFICATION CLARIFICATION

- 10.1 All inquiries with respect to this Request for Proposals shall be directed in writing to the Anna Marie Calli, Acting City Comptroller via facsimile at (845) 569-7490 or via email at: acalli@cityofnewburgh-ny.gov *copying* Dwight Hadley, Financial Consultant, via email at: dwight.hadley@gmail.com.
- 10.2 All questions about the meaning or intent of the specifications shall be submitted in writing to the individuals referenced above in Section 10.1. Replies will be issued by Addenda mailed or delivered to all parties recorded as having received the Proposal documents. Questions submitted must be received by the above referenced *no later than 12 p.m. on Friday, December 17th* in order to be answered. Only questions answered by formal written Addenda will be binding. Oral or other interpretations or clarifications will be without legal effect.

11. MODIFICATION AND WITHDRAWAL OF PROPOSALS

- 11.1 Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Proposal must be executed) and delivered to the place where Proposals are to be submitted at any time prior to the opening of Proposals.
- 11.2 If within twenty-four (24) hours after the Proposals are opened, any Vendor files a duly signed written notice with the City and promptly thereafter demonstrates to the reasonable satisfaction of the City that there was a material and substantial mistake in the preparation of its Proposal, that Vendor may withdraw its Proposal and the Proposal security will be returned. Thereafter, that Vendor will be disqualified from further Proposal on the work.

12. INSURANCE AND SECURITY REQUIREMENTS

- 12.1 The selected Vendor will be required to procure and maintain at its own expense the following insurance coverage:
 - 12.1.1 **Workers' Compensation and Employer's Liability Insurance:** A policy or policies in amounts required by statutory limits.
 - 12.1.2 **General Liability Insurance:** A policy or policies of comprehensive general liability insurance with limits of not less than \$1,000,000.
 - 12.1.3 **Errors and Omission Insurance:** A policy or policies with limits of not less than \$1,000,000.
- 12.2 Each policy of insurance required shall be issued by an insurer licensed to do business in the State of New York, must have an A.M. Best rating of not less than "A," and shall provide that:
 - 12.2.1 The City of Newburgh and TD Bank are named as additionally insured.
 - 12.2.2 The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to the City's Corporation Counsel Office.
 - 12.2.3 The insurance policies shall be automatically renewed upon expiration and continued in force unless the City's Counsel Office is given sixty (60) days written notice to the contrary.
- 12.3 No work shall be commenced under the contract until the selected Vendor has delivered to the Corporation Counsel or his or her designee proof of issuance of all policies of insurance required by the Contract to be procured by the selected Vendor. If at any time, any of said policies shall be or become unsatisfactory to the City, the selected proposer shall promptly obtain a new policy and submit proof of

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

insurance of the same to the City for approval. Upon failure of the selected Vendor to furnish, deliver and maintain such insurance as above provided, this Contract may, at the election of the City, be forthwith declared suspended, discontinued or terminated. Failure of the selected Vendor to procure and maintain any required insurance shall not relieve the selected proposer from any liability under the Contract, nor shall the insurance requirements be constructed to conflict with the obligations of the selected Vendor concerning indemnification.

13. NON-COLLUSIVE PROPOSAL CERTIFICATE, NON-COLLUSION AFFIDAVIT AND ACKNOWLEDGMENT BY PROPOSER DOCUMENTS

- 13.1 Proposals submitted must contain a completed and fully executed original Non-Collusive Proposal Certificate, Non-Collusion Affidavit and Acknowledgement by Proposer forms. These three signed original documents shall be included in the sealed Proposal envelope; copies of said documents shall be attached to the additional number of proposals requested under Section 2.1 in this RFP.

NON-COLLUSIVE PROPOSAL CERTIFICATE

PURSUANT TO New York STATE GENERAL MUNICIPAL LAW SECTION 103-D

By submission of this Proposal, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint Proposal each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- (1) The prices in the Proposal have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the Proposer prior to the opening, directly or indirectly, to any other Proposer or to any competitor; and,
- (3) No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

12/17/2010
(Date)

Sarah Kattapan
(Signature)

SARAH KATTAPAN
(Name and Title) JP FINANCIAL & ACCTG SERVICES

LOOMIS ARMORED US, LLC
(Name of Firm)



NON-COLLUSION AFFIDAVIT

CITY OF NEWBURGH

STATE OF TEXAS)
)SS
COUNTY OF HARRIS)

I, SARAH KATTAPONA of the (City) Town, Village) of HOUSTON in the County of HARRIS in the State of TEXAS, of full age, being duly sworn according to law on my oath dispose and say that:

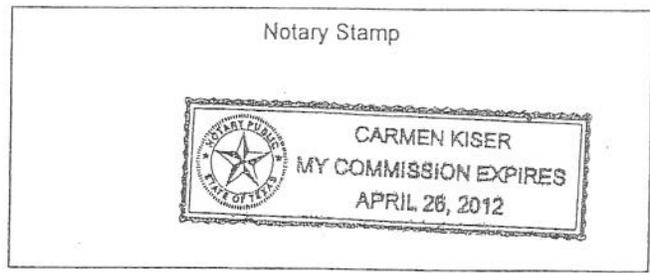
I am A VICEPRESIDENT - FINANCIAL & ACCOUNTING SERVICE an officer of the firm of LOOMIS ARMORED US, LLC the vendor making the Proposal for the above named work, and that I executed the said Proposal with full authority to do so; that said bidder has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise in connection with the above named work; and that all statements contained in said Proposal and in this affidavit are true and correct, and made with the full knowledge that the City of Newburgh as Owner relies upon the truth of the statements contained in said Proposal and in the statements contained in this affidavit in awarding the contract for said work.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by LOOMIS ARMORED US, LLC.
(Name of Firm)

Subscribed and sworn to by: Sarah Kattapon
(Signature of affiant above; also type or print name/title below)

Name: SARAH KATTAPONA Title: VP FINANCIAL & ACCOUNTING SERVICE

Before me this 17th day
of DECEMBER, 2010
Carmen Kiser
Notary Public of Harris Co, TX
My Commission Expires: 4/26/12



THIS AFFIDAVIT MUST BE COMPLETED BY ALL VENDORS SUBMITTING PROPOSALS

ACKNOWLEDGMENT BY PROPOSER

If Individual or Individuals:

STATE OF _____)
COUNTY OF _____) SS.:

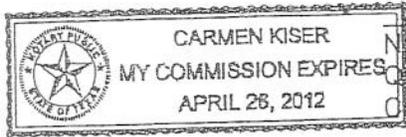
On this _____ day of _____, 2010, before me personally appeared _____ to me known and known to me to be the same person(s) described in _____ and who executed the within instrument, and he/she (or they severally) acknowledged to me that he/she (or they) executed the same.

Notary Public, State of _____
Qualified in _____
Commission Expires _____

If Corporation:

STATE OF TEXAS)
COUNTY OF HARRIS) SS.:

On this 17th day of DECEMBER, 2010, before me personally appeared SARAH KATTAPONZ to me known, who, being by me sworn, did say that he/she resides at (give address) 7015 FAIRDALE BLVD; that he/she is the (give title) V.P. OF FINANCE & ACCTG. SERVICES of the (name of corporation) LOOMIS ARMORED US, LLC the corporation described in and which executed the above instrument; that he/she knows the seal of the corporation, and that the seal affixed to the instrument is such corporate seal; that it was so affixed by order of the board of directors of the corporation, and that he/she signed his/her name thereto by like order.



Carmen Kiser
Notary Public, State of Texas
Qualified in Harris Co, TX
Commission Expires 4/28/12

If Partnership:

STATE OF _____)
COUNTY OF _____) SS.:

On this _____ day of _____, 2010, before me personally came _____ to me known to be the individual who executed the foregoing, and who, being duly sworn, did depose and say that he/she is a partner of the firm of _____ and that he/she has the authority to sign the same, and acknowledged that he/she executed the same as the act and deed of said partnership.

Notary Public, State of _____
Qualified in _____
Commission Expires _____



SERVICE AGREEMENT

The following paragraphs of this Service Agreement (the "Agreement") outline the agreements and understandings by and between

LOOMIS ARMORED US, LLC
 ("LOOMIS")
 a Texas Limited Liability Company
 with offices at:
 2500 City West Blvd. Ste. 900,
 Houston, TX 77042.

and

CITY OF NEWBURGH
 ("CUSTOMER")
 a New York municipal corporation, located at
 ,83 Broadway, City Hall
 Newburgh, NY 12550

This Agreement expresses and outlines the services, roles, and responsibilities of the parties. If additional locations are added to the scope of this Agreement, consistent terms and services will be maintained. These promises for such services and their related payments form the basis of this Agreement, made this 17th day of May, 2011.

Term: Service will begin on the 23rd day of May, 2011 and shall continue for a period of two (2) year(s). At the expiration of this Agreement, this Agreement shall automatically be extended for successive like term periods unless terminated by either party on sixty (60) days written notice prior to the next anniversary date. CUSTOMER agrees that LOOMIS is the exclusive provider for these services for the facilities contained herein. Unless otherwise stated in this agreement, it is expressly understood that this agreement contains no provision for early [M1] termination in whole or part. Either party may terminate this agreement within 5 days written notice in the event of bankruptcy, or insolvency of the other party. Loomis may terminate this agreement with 30 days written notice in the event of a material reduction or cancellation of insurance.

CUSTOMER and LOOMIS agree to the following:

Schedule for Services: Conjunctive, sequential, on route pickup and delivery of items at the following location(s) to/from CUSTOMER's designated, mutually agreed-upon location(s):

LOOMIS BRANCH	UNIT # / LOCATION	MAXIMUM LIABILITY COVERAGE	SERVICE FREQUENCY	FEE for SERVICE
<u>5120</u>	<u>Call at: City of Newburgh, 83 Broadway, 1st Floor, Newburgh, NY 12250. Deliver to: TD Bank, 800 Broadway, Newburg, NY 12250.</u>	<u>\$1,000,000</u> per shipment	<u>3X per week (Mon, Wed, Fri)</u>	<u>\$22.00 per Trip</u> <u>On Call: \$22.00 per trip</u>

Waiting Time: In the event the CUSTOMER requires additional time and LOOMIS agrees to stay, a charge of \$3.00 per one (1) minute will be assessed after the first ten (10) minutes. Over fifteen (15) minutes, LOOMIS may elect to depart from the CUSTOMER'S location. Should LOOMIS be requested to return, the pick-up will be rescheduled as a Special Pick-up and will be charged at an agreed to fee prior to rendering service.

Research, Special Request and Supply Fee: A fee of \$65.00 per hour will be charged for research of LOOMIS' documents or receipts that have aged over sixty (60) days, unless it is determined to be solely an error of LOOMIS or the development at CUSTOMER'S request custom reports or CUSTOMER special requests outside the scope of normal services referenced in Section 1. Supplies provided by LOOMIS to CUSTOMER will be charged back to CUSTOMER at LOOMIS current cost plus 1%.

Excess Item Handling: A fee of \$1.50 per item is assessed when the number of items or containers exceed 5 items per shipment.

Holiday Service Fee: A fee of \$65.00 will be charged for the service provided on those Holidays as listed in Section 11.

Excess Liability: A fee of \$.60 per \$1,000 or fraction thereof for any amounts which exceed the Liability Coverage per Shipment Amount.

Insurance Fee: A fee of NA will be assessed to all services provided within this agreement.

New Account Setup Fee: \$50

CUSTOMER does not desire this Excess Liability Coverage, CUSTOMER must decline Excess Liability Coverage by initialing the box below:

Decline

Reconstruction Obligations:

As explained in Section 7(c), of the Terms and Conditions, CUSTOMER has certain obligations regarding reconstruction of lost, damaged, destroyed checks or other events or items that provide an audit trail. If CUSTOMER prefers to opt-out of these reconstruction obligations, CUSTOMER must decline by initialing the box below.

Decline

If CUSTOMER does NOT agree to reconstruction obligations or cannot meet its reconstruction obligations contained within Section 7(c), LOOMIS' liability for all checks contained within the shipment is limited to Ten Thousand Dollars (\$10,000.) regardless of the face value of the checks in shipment.

The undersigned individual, signing this Agreement on behalf of the CUSTOMER acknowledges, accepts and understands that these services are provided by LOOMIS under the attached Terms and Conditions, which CUSTOMER hereby acknowledges receiving, and further represents that he or she has the authority to sign the Agreement on behalf of, and to bind, the CUSTOMER.

THE CITY OF NEWBURGH

By _____
Printed Name Richard F. Herbek
Title Acting City Manager
Date _____

LOOMIS ARMORED US, LLC

By _____
Printed Name _____
Title _____
Date _____

APPROVED AS TO FINANCES

By _____
Cheryl A. Gross
Comptroller

APPROVED AS TO FORM

By _____
Michelle Kelson
Corporation Counsel

TERMS AND CONDITIONS

1. **Service:** LOOMIS agrees to pick up, receive from, and/or deliver to CUSTOMER, or any designated agent, securely sealed or locked shipments which may contain any or all of the following: currency, coin, checks, securities, or other valuables. If the shipment container(s) does not appear to be securely locked or sealed, LOOMIS reserves the right to refuse to accept such container(s) and will not receive said container(s) from the CUSTOMER or its designated agent. If LOOMIS accepts sealed container(s), LOOMIS will give CUSTOMER a receipt for said sealed container(s), transport and deliver such sealed container(s) to the consignee designated by the CUSTOMER. CUSTOMER agrees that it will not conceal or misrepresent any material fact or circumstances concerning the property delivered to LOOMIS pursuant to this Agreement. The fee payable by CUSTOMER to LOOMIS is based upon the agreed upon liability limit(s) and level(s) of service provided by LOOMIS as stated in this Agreement. If additional or special services are required, CUSTOMER and LOOMIS agree to negotiate fees for these other services. Before these other services commence, a written amendment will be attached to this Agreement confirming these additional services. If other services are provided prior to the execution of a written amendment, the fees to be charged will be the standard fees quoted for such service by LOOMIS.

2. **Billing and Payment:** CUSTOMER agrees to pay LOOMIS within thirty (30) days from date of invoices which shall include any applicable federal, state or local taxes. In addition, LOOMIS may, at its discretion, impose a service charge of one and one-half percent (1.5%) per month or eighteen percent (18%) per annum or such lesser rate as may be required by law, of the amount unpaid by CUSTOMER, as is due and payable to LOOMIS on all invoices not paid in full by invoice due date. CUSTOMER further agrees that undisputed portions of any invoice shall be remitted to LOOMIS in accordance with normal payment terms. However, should CUSTOMER fail to pay any undisputed amounts within forty-five (45) days of the invoice date, LOOMIS may, at its sole option, terminate this Agreement upon ten (10) days written notice to CUSTOMER. CUSTOMER agrees to notify LOOMIS of dispute(s) arising from any invoice within thirty (30) days after such invoice has been presented to CUSTOMER, or else such claim shall be deemed waived. All amounts due hereunder shall be paid by cash, check or ACH unless otherwise agreed on the signature page of this Agreement.

3. **Rate Adjustment:** LOOMIS shall annually increase the service fee(s) based upon the year to year changes in the Consumer Price Index (CPI) or other applicable economic factor(s).

To account for future movements in the price of diesel fuel, up and down, LOOMIS will henceforth adjust the monthly fuel fee based on U.S. average diesel prices as measured and published by the Department of Energy (WWW.EIA.DOE.GOV). LOOMIS' established baseline is \$1.31. Any cost above the \$1.31 baseline cost will be adjusted on a monthly basis by 0.5% on price movements of 10 cents per gallon (i.e. if diesel prices rise to \$1.41, the corresponding fuel fee is increased by 0.5%). Each party will be able to monitor and keep track of the adjustments easily.

The fuel fee rate change reflected on the invoice will be based on national average diesel prices published on the Department of Energy Website. The calculation is the average of the national prices for the first four Mondays of the month rounded to the next cent. The table is for reference only and as such, does not reflect the maximum rate which might be assessed.

Minimum	Maximum	Per Gallon	Fee (%)
\$4.91	\$5.00	\$.10	18.00%
\$4.81	\$4.90	\$.10	17.50%
\$4.71	\$4.80	\$.10	17.00%
\$4.61	\$4.70	\$.10	16.50%
\$4.51	\$4.60	\$.10	16.00%
\$4.41	\$4.50	\$.10	15.50%
\$4.31	\$4.40	\$.10	15.00%
\$4.21	\$4.30	\$.10	14.50%
\$4.11	\$4.20	\$.10	14.00%
\$4.01	\$4.10	\$.10	13.50%
\$3.91	\$4.00	\$.10	13.00%
\$3.81	\$3.90	\$.10	12.50%
\$3.71	\$3.80	\$.10	12.00%
\$3.61	\$3.70	\$.10	11.50%
\$3.51	\$3.60	\$.10	11.00%
\$3.41	\$3.50	\$.10	10.50%
\$3.31	\$3.40	\$.10	10.00%
\$3.21	\$3.30	\$.10	9.50%
\$3.11	\$3.20	\$.10	9.00%
\$3.01	\$3.10	\$.10	8.50%
\$2.91	\$3.00	\$.10	8.00%
\$2.81	\$2.90	\$.10	7.50%
\$2.71	\$2.80	\$.10	7.00%
\$2.61	\$2.70	\$.10	6.50%
\$2.51	\$2.60	\$.10	6.00%
\$2.41	\$2.50	\$.10	5.50%
\$2.31	\$2.40	\$.10	5.00%
\$2.21	\$2.30	\$.10	4.50%
\$2.11	\$2.20	\$.10	4.00%
\$2.01	\$2.10	\$.10	3.50%
\$1.91	\$2.00	\$.10	3.00%
\$1.81	\$1.90	\$.10	2.50%
\$1.71	\$1.80	\$.10	2.00%
\$1.61	\$1.70	\$.10	1.50%
\$1.51	\$1.60	\$.10	1.00%
\$1.41	\$1.50	\$.10	.50%
\$1.31	\$1.40	\$.10	.00%

3a. LOOMIS reserves the right in times of global economic downturn or due to changes in regulatory obligations to renegotiate rates and fees in good faith with customer. In the event that CUSTOMER refuses to consent to such adjustment(s) or fee(s), LOOMIS shall have the right to terminate this Agreement upon Thirty (30) days written notice to CUSTOMER.

4. **Liability:** LOOMIS agrees to assume the liability for any loss, according to the terms of this Agreement of the securely sealed container(s) from the time LOOMIS signs for and receives physical custody of the sealed container(s). LOOMIS' responsibility terminates when the CUSTOMER or its designated consignee takes physical possession of the sealed container(s) and signs LOOMIS' receipt. If it is impossible to complete the delivery, LOOMIS shall be responsible for any loss until the sealed container(s) is returned to the CUSTOMER or its designated agent and a signed receipt obtained. While the sealed container(s) is stored in the CUSTOMER'S premises, LOOMIS does not assume the liability for any loss. If CUSTOMER conceals or misrepresents any material fact or circumstance concerning the property or container, or the contents thereof, LOOMIS will have no liability for any loss in any way related to such fact or circumstance. LOOMIS reserves the right to take any and all action as may be reasonably necessary to prevent money laundering to the extent permitted under law or as may be required by any regulatory body that may exert a right of control over LOOMIS.

UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING FROM THE SUBJECT MATTER OR SERVICES OF THIS AGREEMENT, REGARDLESS OF THE TYPE OF CLAIM AND EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; SUCH AS, BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF INTEREST, LOST DATA, DATA TRANSPORTATION OR TRANSMISSION ERROR OR ANTICIPATED PROFITS OR LOST BUSINESS. EXCEPT FOR THE CARGO LIABILITY SPECIFIED WITHIN SECTION 4, IN NO EVENT SHALL LOOMIS' LIABILITY TO CUSTOMER ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT REPRESENTED BY THAT PORTION OF THE SERVICE CHARGE CONTAINED HEREIN FOR THE SERVICE(S) PAID BY CUSTOMER FOR SUCH SERVICES.

5. **Excess Liability:** The following terms will apply if CUSTOMER did not decline excess liability coverage on the signature page. If LOOMIS shall accept tender of a shipment in excess of the Liability Coverage per Shipment Amount, CUSTOMER agrees to pay LOOMIS the excess liability fee set forth on the signature page. CUSTOMER, by paying this additional fee, will obtain full dollar coverage of any or all losses, subject to the other provisions of this Agreement. If CUSTOMER declines Excess Liability Coverage, liabilities covered under this Agreement are limited to the Liability Coverage per Shipment Amount.

6. **Indemnity:** CUSTOMER agrees to indemnify, defend and hold harmless LOOMIS from all claims, costs or expenses arising out of any third party's threatened or actual claim, suit, demand, garnishment or seizure of any funds or property provided by CUSTOMER hereunder that is in LOOMIS' custody due to a claim, demand or suit against CUSTOMER by such third party or through governmental seizure. LOOMIS agrees to give CUSTOMER prompt notice of any such claim, suit, demand or seizure and to provide CUSTOMER reasonable cooperation on the defense.

7. **Claim Procedures:** The following provisions shall control in the event of any loss or claim, notwithstanding anything to the contrary contained in this Agreement:

a) In the event of a loss, CUSTOMER agrees to notify LOOMIS in writing within four (4) calendar days after the loss is discovered or should have been discovered in the exercise of due care. CUSTOMER agrees that any loss shall be reported by CUSTOMER to LOOMIS within forty-five (45) days after the pick-up by LOOMIS of the securely sealed container in connection with which the loss is asserted. Unless such notice has been received by LOOMIS within this forty-five (45) day period, such claim shall be deemed waived and released by the CUSTOMER. It is agreed that both parties will work together to determine the extent of the loss, and if possible, the cause of loss.

b) The sole liability of LOOMIS (except as stated in this Agreement) in the event of a loss, from whatever cause, shall be subject to the Liability Coverage per Shipment Amount set forth in this Agreement or the Excess Liability Coverage, if not declined by the CUSTOMER.

c) Unless CUSTOMER has opted-out of its reconstruction obligations in writing above, CUSTOMER shall retain sufficient information to allow reconstruction of item(s) in the event of a loss. In addition, CUSTOMER agrees it will cooperate and assist in reconstructing lost, damaged, or destroyed items constituting a part of any loss. LOOMIS' liability, unless otherwise stated in this Agreement, shall be the payment to the CUSTOMER for the reasonable costs necessary to reconstruct the item(s), any necessary cost because of stop-payment procedures or reasonable costs associated with CUSTOMER providing information and assistance with recovery of loss. The term "Reconstruction" is defined to mean the identification of the item(s) only to the extent of determining the face amount of said item(s) and the identity of the maker or endorser of each or providing audit trail, foreign or internal network information, data, customer information or other relevant information to allow Loomis to recover any and/or all item(s) or cash associated with loss. CUSTOMER agrees in the event of a loss, that any liability of LOOMIS shall be reduced by the face value of reconstructed or recovered item(s).

d) Upon the request of LOOMIS, CUSTOMER will furnish a proof of loss to LOOMIS or its insurance carrier. Once reimbursement has been made to CUSTOMER, LOOMIS and its insurer shall receive any and all of the CUSTOMER'S rights and remedies of recovery.

8. **Limitations & Force Majeure:**

a) The CUSTOMER agrees that LOOMIS will not be liable for any loss or damage caused by or resulting from shortages claimed in the contents of the sealed or locked shipment(s), for non-performance or delays, or for the breakage of statuary, marble, glassware, bric-a-brac, porcelains and similar fragile articles. Likewise, LOOMIS

shall not be liable to CUSTOMER for failure to render service if in LOOMIS' judgment the same may endanger the safety of CUSTOMER'S property or personnel or LOOMIS' vehicles or employees.

b) It is further agreed that LOOMIS shall not be held accountable or liable for any damages or losses, caused by or resulting from illegal or fraudulent acts of CUSTOMER's employees, agents, representatives, or third-party contractors.

c) CUSTOMER agrees that LOOMIS shall not have any liability for losses of any documentation carried by LOOMIS at CUSTOMER's request without compensation.

d) CUSTOMER expressly understands and accepts that ownership (title) to cash transported or stored by LOOMIS shall never transfer to LOOMIS.

e) It is further agreed LOOMIS shall not be held accountable or liable for any damages or losses, whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) for which liability is assumed by LOOMIS, resulting from:

(i) Hostile or warlike action in time of peace or war, including action hindering, combating or defending against an actual, impending or expected attack: (1) by any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval or air forces; or (2) by military, naval or air forces; or (3) by any agent of any such government, power, authority or forces.

(ii) Nuclear reaction, nuclear radiation, radioactive contamination or any weapon of war employing atomic fission or radioactive force or similar means, whether in time of peace or war.

(iii) Insurrection, rebellion, revolution, terrorist act, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence; seizure or destruction under quarantine or customs regulations; confiscation by order of any governmental or public authority; or risks of contraband or illegal transportation or trade.

(iv) Acts of God, named storms, tornadoes, flood, fire, earthquake, imposter pick-up or delivery, air piracy, strikes, labor disturbances, or other conditions or circumstances beyond LOOMIS' reasonable control.

9. **Disputes:** Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the City Manager of the CITY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County.

10. **Container Value Limitation:** CUSTOMER acknowledges and agrees that the maximum value which LOOMIS will transport in any individual container will not exceed two hundred fifty thousand dollars (\$250,000). If the total value of a shipment which CUSTOMER seeks to tender to LOOMIS exceeds two hundred fifty thousand dollars (\$250,000), such shipment must be broken down into separate shipment containers of two hundred fifty thousand dollars (\$250,000) or less.

11. **Holiday Service:** LOOMIS agrees to provide service as stated in the Agreement with the following holiday exceptions: New Year's Day, Martin Luther King Day,

President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Columbus Day, Thanksgiving Day, Christmas Day, federal banking and any local applicable observed holiday. Charges for service on such days will be as stated upon page 1 of this Agreement, excluding Christmas Day. LOOMIS will not provide Christmas Day service.

12. **Specials:** Unscheduled pickups or deliveries are available under the same conditions and provisions of this Agreement. Prices are quoted upon request.

13. **Excess Liability Coverage:** LOOMIS reserves the right to refuse tender of a shipment in excess of the Liability Coverage per Shipment Amount as set forth in this Agreement.

14. **Confidentiality:** Each party receiving information (the "Receiving Party") undertakes to retain in confidence the terms of this agreement and all other non-public information, technology, materials and know-how of the other party disclosed or acquired by the Receiving Party pursuant to or in connection with this Agreement which is either designated as proprietary and/or confidential or, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"). Neither party shall use any Confidential Information with respect to which it is the Receiving Party for any purpose other than to carry out the activities contemplated by this agreement. Each party agrees to use commercially reasonable efforts to protect Confidential Information of the other party, and in any event, to take precautions at least as great as those taken to protect its own confidential information of a similar nature. Each party shall also notify the other promptly in writing in the event such party learns of any unauthorized use or disclosure of any Confidential Information that it has received from the other party, and will cooperate in good faith to remedy such occurrence to the extent reasonably possible.

Language from the City's Template (Sections Modified)

Executory Clause: The CUSTOMER shall have no liability under this Agreement to LOOMIS or to anyone else beyond funds appropriated and available for this Agreement. In the event that funds are not sufficiently appropriated by CUSTOMER for any term of the Agreement or extension thereto, then this Agreement shall immediately terminate and all amounts for services rendered shall become due and payable.

Procurement Of Agreement: LOOMIS represents and warrants that no person or selling agency has been employed or retained by LOOMIS to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. LOOMIS further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. LOOMIS makes such representations and warranties to induce the CUSTOMER to enter into this Agreement and the CUSTOMER relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CUSTOMER shall have the right to annul this Agreement without liability, entitling the CUSTOMER to recover all monies paid hereunder and LOOMIS shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CUSTOMER for such falsity or breach, nor shall it constitute a waiver of the CUSTOMER'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

Conflict of Interest: LOOMIS represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided.

Independent Contractor: In performing the SERVICES and/or supplying goods and incurring expenses under this Agreement, LOOMIS shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CUSTOMER. As an independent contractor, LOOMIS shall be solely responsible for determining the means and methods of performing the SERVICES and/or supplying of the goods and shall have complete charge and responsibility for LOOMIS'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, LOOMIS covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CUSTOMER, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CUSTOMER including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

Audit, Books & Records: LOOMIS agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

LOOMIS agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CUSTOMER, or any State and/ or Federal auditors, and any other persons duly authorized by the CUSTOMER, shall have full access and the right to examine any of said materials during said period.

Current or Former City Employees: LOOMIS represents and warrants that it shall not knowingly retain the SERVICES of any CUSTOMER employee or former CUSTOMER employee in connection with this Agreement or any other agreement that said LOOMIS has or may have with the CUSTOMER without the express written permission of the CUSTOMER. This limitation period covers the preceding three (3) years or longer if the CUSTOMER employee or

former CUSTOMER employee has or may have an actual or perceived conflict of interests due to their position with the CUSTOMER.

For a breach or violation of such representations or warranties, the CUSTOMER shall have the right to annul this Agreement without liability, entitling the CUSTOMER to recover all monies paid hereunder and LOOMIS shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CUSTOMER for such falsity or breach, nor shall it constitute a waiver of the CUSTOMER'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

Modification: No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the Scope of Services of this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CUSTOMER, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

Insurance [M2]: [KH3]During the term of this Agreement, LOOMIS shall maintain insurance and provide CUSTOMER with evidence of said coverage through Certificates of Insurance upon request with the following coverages and minimum limits:

Type of Coverage Limit of Coverage

(WC) - Worker's Compensation Statutory
Employer's liability \$1,000,000 or similar insurance each occurrence

(AL) - Automobile liability
\$1,000,000 in aggregate
Bodily Injury \$1,000,000 each occurrence
Property Damage \$1,000,000 each occurrence

(GL) - Comprehensive General Liability
\$1,000,000 each occurrence, including
broad form contractual liability, bodily injury each occurrence and property damage

(U) - Umbrella Liability
\$1,000,000 per occurrence

(AR) - All Risk (Cargo/Cash-in-Transit)
\$1,000,000 per occurrence

LOOMIS agrees to list CUSTOMER as an additional insured on the Commercial General Liability policy but only to the extent of LOOMIS' negligence and willful misconduct. LOOMIS also agrees to list CUSTOMER as a loss payee on the All-Risk policy. The parties agree to mutual subrogation.

Insurance will respond on a primary basis without contribution from any other insurance until limits have become exhausted.

Certificates of insurance shall be sent to:

City of Newburgh
Attn: _____
83 Broadway
City Hall
Newburgh, New York 12550

15. Entire Agreement: This Agreement: (a) shall be governed by and construed in accordance with the laws of the State of New York without reference to conflict of laws principles; (b) constitutes the entire agreement and understanding of the parties with respect to its subject matter, except that the terms of any agreement regarding confidential information of the parties shall be deemed to be a part of this Agreement; (c) and the terms and conditions including fees set forth in it shall be treated as confidential information; (d) is not for the benefit of any third party; (e) may not be amended except by a written instrument signed by both CUSTOMER and LOOMIS; (f) may not be assigned by CUSTOMER without LOOMIS' prior written consent; (g) may be assigned by LOOMIS, provided that LOOMIS shall furnish written notice of such assignment to CUSTOMER; (h) shall be binding upon any assignees, and defined terms used in this Agreement to apply to either party shall be construed to refer to such party's assignee; (i) is the product of negotiation; (j) is subject to a contractually agreed one (1) year statute of limitations on all claims or the minimum allowable by applicable law; (k) shall not be deemed to have been drafted by either party; (l) may be executed in multiple counterparts, all of the same agreement which when taken together shall constitute one and the same instrument; (m) contains article and section headings which are for convenience of reference only and which shall not be deemed to alter or affect the meaning or interpretation of any provision of this Agreement; (n) does not make either party the agent, fiduciary or partner of the other; (o) does not grant either party any authority to bind the other to any legal obligation; (p) does not intend to nor grant any rights to any third party and (q) shall remain valid and enforceable despite the holding of any specific provision to be invalid or unenforceable, except for such specific provision. The waiver by either party of any rights arising out of this Agreement shall not cause a waiver of any other rights under this Agreement, at law or in equity. Any and all correspondence regarding this Agreement shall be delivered via certified mail (return receipt requested) or verifiable third-party courier (return receipt requested).

RESOLUTION NO.: 167- 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A DONATION OF A 1991 INTER BRINKS TRUCK
FROM THE TOWN OF WOODBURY
FOR USE BY THE CITY OF NEWBURGH POLICE DEPARTMENT**

WHEREAS, the Town of Woodbury has contacted the City of Newburgh with an offer to donate a 1991 Inter Brinks Truck to the City of Newburgh Police Department; and

WHEREAS, such donation shall be at no cost to the City of Newburgh; and

WHEREAS, this Council deems it to be in the best interests of the City of Newburgh to accept such donation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager of the City of Newburgh be and he is hereby authorized to accept the 1991 Inter Brinks Truck being donated by the Town of Woodbury, upon assurance by the Corporation Counsel that title and documentation are in order, with the appreciation and thanks of the City of Newburgh.

Mayor Valentine pointed out this is not an armored car. It is a vehicle the police department can use for SWAT operations. The Town of Woodbury is no longer using the car.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 168- 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO JOSHUA P. MOUSSEAU
TO THE PREMISES KNOWN AS 86 FULLERTON AVENUE
(SECTION 21, BLOCK 1, LOT 33)**

WHEREAS, on February 11, 2010, the City of Newburgh conveyed property located at 86 Fullerton Avenue, being more accurately described on the official Tax Map of the City of Newburgh as Section 21, Block 1, Lot 33, to Joshua P. Mousseau; and

WHEREAS, Mr. Mousseau, by his attorney, has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, the appropriate departments have reviewed their files and advised that the covenants have been complied with, and recommends such release be granted; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh to grant such request;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4 and 5 of the aforementioned deed.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

**RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY**

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 86 Fullerton Avenue, Section 21, Block 1, Lot 33 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, and 5 in a deed dated February 11, 2010, from THE CITY OF NEWBURGH to JOSHUA P. MOUSSEAU, recorded in the Orange County Clerk's Office on February 18, 2010 in Liber 12969 of Deeds at Page 17 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed

Dated: _____, 2011

THE CITY OF NEWBURGH

By: _____
RICHARD F. HERBEK,
Acting City Manager

STATE OF NEW YORK)
)ss.:
COUNTY OF ORANGE)

On the ____ day of _____ in the year 2011, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO: 169 - 2011

OF

SEPTEMBER 12, 2011

A RESOLUTION AUTHORIZING THE EXTENSION OF TIME
TO CLOSE TITLE ON 21 LEROY PLACE
SOLD AT THE APRIL 14, 2011 PROPERTY AUCTION

WHEREAS, this Council, by Resolution No.: 80-2011 of April 25, 2011, confirmed the sale of 21 Leroy Place and authorized the execution of a deed to Rafiq A. Majeed; and

WHEREAS, Rafiq A. Majeed submitted a request for an extension of time to close title; and

WHEREAS, the City Manager has granted the sixty (60) day allotted extension to close title on said premises on or before August 16, 2011; and

WHEREAS, due to unforeseen circumstances, specifically delays in obtaining title, the purchaser has requested additional time to close title; and

WHEREAS, this Council has determined that granting the requested extension 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 an extension of time to close title on 21 Leroy Place be and is hereby granted until October 14, 2011, that date being sixty (60) days from the August 16, 2011 deadline previously authorized by the City Manager.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO: 170 - 2011

OF

SEPTEMBER 12, 2011

A RESOLUTION AUTHORIZING THE EXTENSION OF TIME
TO CLOSE TITLE ON 252 ROBINSON AVENUE, 241 WASHINGTON STREET
AND 16 WILLIAM STREET SOLD AT THE APRIL 14, 2011 PROPERTY
AUCTION

WHEREAS, this Council, by Resolution No.: 80-2011 of April 25, 2011, confirmed the sale of 252 Robinson Avenue (Section 7, Block 2, Lot 3), 241 Washington Street (Section 38, Block 2, Lot 12) and 16 William Street (Section 35, Block 3, Lot 14) and authorized the execution of a deed to Sergio Murillo; and

WHEREAS, Sergio Murillo submitted a request for an extension of time to close title; and

WHEREAS, the City Manager has granted the sixty (60) day allotted extension to close title on said properties on or before August 16, 2011; and

WHEREAS, due to unforeseen circumstances the purchaser has requested additional time to close title; and

WHEREAS, this Council has determined that granting the requested extension 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 an extension of time to close title on 252 Robinson Avenue (Section 7, Block 2, Lot 3), 241 Washington Street (Section 38, Block 2, Lot 12) and 16 William Street (Section 35, Block 3, Lot 14) be and is hereby granted until November 14, 2011, that date being ninety (90) days from the August 16, 2011 deadline previously authorized by the City Manager.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO: 171 - 2011

OF

SEPTEMBER 12, 2011

A RESOLUTION AUTHORIZING THE EXTENSION OF TIME
TO CLOSE TITLE ON 251 THIRD STREET
SOLD AT THE APRIL 14, 2011 PROPERTY AUCTION

WHEREAS, this Council, by Resolution No.: 81-2011 of April 25, 2011, confirmed the sale of 251 Third Street and authorized the execution of a deed to Walden Wireless Communications, LLC; and

WHEREAS, Walden Wireless Communications, LLC submitted a request for an extension of time to close title; and

WHEREAS, the City Manager has granted the sixty (60) day allotted extension to close title on said premises on or before August 16, 2011; and

WHEREAS, due to unforeseen circumstances, the purchaser has requested additional time to close title; and

WHEREAS, this Council has determined that granting the requested extension 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 an extension of time to close title on 251 Third Street be and is hereby granted until November 16, 2011, that date being three (3) months from the August 16, 2011 deadline previously authorized by the City Manager.

Mayor Valentine noted that the previous three resolutions provide extensions of time to close on the properties in a timeframe the council felt it could reasonably accommodate the purchasers.

Michelle Kelson pointed out they are either 60-day or 90-day extensions.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 172 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
DECLARING ITSELF TO BE LEAD AGENCY UNDER STATE
ENVIRONMENTAL
QUALITY REVIEW ACT (SEQRA) WITH RESPECT TO THE AMENDMENT
OF THE SUSTAINABLE MASTER PLAN BY THE ADOPTION OF THE
FUTURE LAND USE PLAN OF THE CITY OF NEWBURGH, ADOPTING AN
ENVIRONMENTAL ASSESSMENT FORM (EAF), ISSUING A NEGATIVE
DECLARATION AND
ADOPTING THE FUTURE LAND USE PLAN**

WHEREAS, the City of Newburgh is proposing to adopt a Future Land Use Plan as an amendment to the City's Sustainable Master Plan pursuant to Section 28-a of the New York State General City Law; and

WHEREAS, the City of Newburgh proposes to undertake the adoption of the Future Land Use Plan in compliance with the terms of State law and does hereby wish to review the project in accordance with the State Environmental Quality Review Act (SEQRA); and

WHEREAS, by Resolution No. 142-2011 of July 11, 2011, in compliance with SEQRA, the City Council of the City of Newburgh declared its intent to assume Lead Agency status, classified the project as a Type I action, proposed to accept as complete an Environmental Assessment Form ("EAF"), referred the proposed Future Land Use Plan to the City of Newburgh Planning Board and the Orange County Planning Department pursuant to General Municipal Law Section 239-m and General City Law Section 28-a, and commenced a 30-day public comment period; and

WHEREAS, in compliance with (SEQRA), the City Council of the City of Newburgh now wishes to assume Lead Agency status, approve and adopt a Full Environmental Assessment Form ("EAF"); and

WHEREAS, the City of Newburgh has taken a hard look at the environmental impacts of adopting the Future Land use Plan as an amendment to the Comprehensive Sustainable Master Plan and has determined that there will be no negative environmental impacts regarding same; and

WHEREAS, the City Council finds that the adoption of the Future Land Use Plan as an amendment to the City's Sustainable Master Plan 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 as follows:

1. That the City Council of the City of Newburgh hereby declares itself to be Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6; and
2. Adopts a Full Environmental Assessment Form, which is attached hereto; and
3. Issues a Negative Declaration pursuant to the SEQRA;
4. Adopts the Future Land Use Plan as an amendment to the City's Sustainable Master Plan pursuant to Section 28-a of the New York State General City Law.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 173 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT WITH ARCADIS/MALCOLM PIRNIE, INC.
FOR PROFESSIONAL SERVICES TO PREPARE
A PHASE I LONG TERM CONTROL PLAN
FOR THE WASTEWATER TREATMENT PLANT IN CONNECTION WITH
SPDES PERMIT NY NO. 0026310 ISSUED BY THE
NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

WHEREAS, the New York State Department of Environmental Conservation (DEC) issued to the City of Newburgh (City) a SPDES permit NY No. 0026310 for the operation of the City's Wastewater Treatment Plant ("Facility"); and

WHEREAS, the SPDES permit required submission of a Phase I Long Term Control Plan ("LTCP 1") by October 1, 2009 and which date was extended to October 1, 2010 through a modified permit; and

WHEREAS, the DEC is proposing an enforcement action against the City; and

WHEREAS, the City Engineer and the Facility Manager have evaluated the qualifications of potential consultants to perform the necessary work to develop and prepare a LTCP 1 for the Facility and have determined that Arcadis/Malcolm Pirnie, Inc. with Stantec as a sub-consultant, is the most qualified engineering firm to perform the work required to develop a LTCP 1; and

WHEREAS, this Council determines that entering into a contract with Acadis/Malcolm Pirnie, Inc. for professional services in connection with the development and preparation of a LTCP 1 is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an agreement for professional services with Acadis/Malcolm Pirnie, Inc., in substantially the same form as annexed hereto and made part hereof with other provisions as Corporation Counsel may require, to prepare and develop a Phase I Long Term Control Plan for the City's Wastewater Treatment Plant.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

Between City of Newburgh and Malcolm Pirnie, Inc.

This is an Agreement effective as of _____, 2011 ["Effective Date"] between City of Newburgh ["Client"], a municipal corporation, having its principal place of business at 83 Broadway, Newburgh, New York 12550, and Malcolm Pirnie, Inc., ["Malcolm Pirnie"] a corporation chartered under the laws of the State of New York, having its principal place of business at 44 South Broadway, 15th Floor, White Plains, New York 10601 and an office at 855 Route 146, Suite 210, Clifton Park, New York 12065.

The Client intends to develop a long term control plan for combined sewer overflows (CSO) ["Project"].

Client engages Malcolm Pirnie to provide professional engineering services in support of its Project ["Services"].

The location of the Project is _____ ["Site"], _____ ["State"].

Malcolm Pirnie's Services for the Project are described generally as follows:

Malcolm Pirnie, and its subconsultants, will perform flow monitoring, develop and calibrate a collection system model, assess the wastewater treatment facility, review CSO best management practices (BMPs) and prepare a Long Term Control Plan (LTCP) on behalf of the Client.

In consideration of the mutual promises herein, Client and Malcolm Pirnie agree that the terms and conditions of this Agreement are the following:

1 BASIC SERVICES

- 1.1 **Scope.** Malcolm Pirnie shall provide the Basic Services described in Schedule A. Malcolm Pirnie's obligations under this Agreement are solely for the benefit of Client and no other party is intended to benefit or have rights hereunder.
- 1.2 **Standard of Care.** Malcolm Pirnie shall perform the Services under this Agreement at the level customary for competent and prudent engineers performing such services at the time and place where the Services are provided ["Standard of Care"]. These Services will be provided by licensed engineers and other professionals and individuals skilled in other technical disciplines, as appropriate.
- 1.3 **Instruments of Service.** Malcolm Pirnie is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all instruments of its Services including designs, drawings, specifications, reports ["Service Instruments"] and other services provided under this Agreement.
- 1.4 **Indemnification.** Malcolm Pirnie agrees to indemnify and hold Client harmless from all losses and damages resulting from Malcolm Pirnie's failure to meet the Standard of Care.
- 1.5 **Subcontractors.** Any subcontractors and outside associates or consultants to be engaged by Malcolm Pirnie under this Agreement are limited to those identified in Schedules A and B, or as Client specifically approves during the performance of this Agreement.

2 ADDITIONAL SERVICES

- 2.1 **Scope.** Malcolm Pirnie will provide the Additional Services described in Schedule B when authorized in writing by Client.

3 SECTION 3 -- CLIENT'S RESPONSIBILITIES

Unless stated otherwise in Section 8, Client shall do the following in a timely manner:

- 3.1 **Client's Representative.** Designate a representative having authority to give instructions, receive information, define Client's policies, and make decisions with respect to the Services.
- 3.2 **Services Criteria.** Provide all criteria and information as to Client's requirements for the Services, including objectives, concepts, constraints, and performance requirements, and any budgetary limitations.
- 3.3 **Data.** Give Malcolm Pirnie all available information, including previous reports and any other data in the possession of Client relative to the Services. These data may include (1) data prepared by others, including borings, subsurface explorations, hydro-

graphic surveys, and laboratory tests and inspections of samples, materials and equipment, (2) appropriate professional interpretations of such data, (3) environmental assessments and impact statements, (4) property, boundary, easement, right-of-way, topographic and utility surveys, (5) property descriptions, zoning, deed and other land use restrictions, and (6) other necessary special data or consultations. Malcolm Pirnie may rely on the accuracy and completeness of the supplied data.

- 3.4 **Access.** Arrange for Malcolm Pirnie to enter upon public and private property as necessary.
- 3.5 **Review.** Examine the Service Instruments and render written decisions concerning the Service Instruments within a reasonable time.
- 3.6 **Expert Advice.** Provide legal, accounting, insurance or other necessary advisory services for the Services. Client expressly acknowledges and agrees that the Services provided do not and shall not include the practice of law or other legal services, nor any form of professional accounting or insurance advisory services.
- 3.7 **Permits.** Furnish approvals and permits from governmental authorities or other entities having jurisdiction over the Services and approvals from others as may be necessary for the timely completion of the Services.
- 3.8 **Services Developments.** Give prompt written notice to Malcolm Pirnie whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Malcolm Pirnie's services.

4 PERIODS OF SERVICE

- 4.1 **Time of Performance.** Sections 4 and 5 anticipate the orderly and continuous progress of the Services. The time of performance contemplated is the period which should reasonably be required for the completion of the Services.
- 4.2 **Delays.** If Schedule A specifies periods of time for performance of services or specific dates by which services are to be completed and if such periods or dates are exceeded through no fault of Malcolm Pirnie, the compensation specified under Section 5 shall be subject to equitable adjustment.
- 4.3 **Start of Performance.** Malcolm Pirnie will start the Basic Services upon authorization by Client. Unless otherwise stated in this Agreement, signing of this Agreement by both Client and Pirnie will constitute such authorization. If Client elects to authorize Malcolm Pirnie to proceed before signing this Agreement, Malcolm Pirnie shall be paid as if the services had been performed after both parties signed the Agreement.
- 4.4 **Completion of Performance.** For the purposes of final payment under Section 5, completion of Malcolm Pirnie's services will occur upon delivery of the final report as specified in Schedule A or B, as appropriate.
- 4.5 **Force Majeure.** If a force, event, or circumstance beyond Malcolm Pirnie's control interrupts or delays Malcolm Pirnie's performance, the time of performance of the Basic or Additional Services shall be equitably adjusted.

5 COMPENSATION

- 5.1 **Basic Services.** Client shall pay Malcolm Pirnie the Amount stated in invoices issued in accordance with Schedule C [Pricing Schedule] for actual work performed and Reimbursable Expenses incurred during the period covered by the invoice. Invoices are due and payable within 30 days after receipt by Client. Client's payment shall be in the form and shall be sent to the Malcolm Pirnie address as described in the invoices.
- 5.2 **Additional Services.** Client shall pay Malcolm Pirnie for Additional Services actually performed pursuant to Client's authorization and invoiced in accordance with the Pricing Schedule.
- 5.3 **Litigation Services.** If Client requires Malcolm Pirnie's services either as a witness in, or support of, litigation or other dispute resolution procedures between Client and a third party, Malcolm Pirnie will provide such services in accordance with a Pricing Schedule for litigation services.
- 5.4 **Delay or Termination.**
- 5.4.1 If Client delays the performance of, or payment for, services under this Agreement for more than 3 months for a reason(s) other than Malcolm Pirnie's fault, Malcolm Pirnie may suspend performance until it receives payment in full for services rendered and expenses incurred to the date of suspension.
- 5.4.2 If Client terminates this Agreement prior to completion of the Basic Services, Malcolm Pirnie shall be paid in full for services rendered and expenses incurred to the date of termination, including reasonable demobilization and termination expenses.
- 5.5 **Disputed Amounts.** Notwithstanding the provisions of Section 7, if Client disputes an item(s) or amount(s) contained in an invoice, Client agrees to pay the balance of the undisputed invoiced amounts to Malcolm Pirnie in accordance with Schedule C.

- 5.6 **Collection.** Any reasonable attorneys' fees or other reasonable costs incurred by Malcolm Pirnie in collection of delinquent amounts shall be paid by Client.

6 OPINIONS OF CONSTRUCTION COST

- 6.1 **Construction Cost.** If the Service Instruments includes an estimate of the cost of constructing a facility [**Construction Cost**], that cost includes the total cost to Client of those portions of the Project described in the Service Instruments. Construction Cost will not include Malcolm Pirnie's compensation and expenses, the cost of land, rights of way, or compensation for properties. Construction Cost will also not include Client's legal, accounting, or insurance counseling services, or interest and financing charges incurred in connection with the Project, or the cost of services to be provided by others under paragraph 3.6 unless otherwise specified in Schedule A.
- 6.2 **Opinions of Cost.** Malcolm Pirnie's opinion of probable Construction Cost is made on the basis of Malcolm Pirnie's experience and qualifications and represents Malcolm Pirnie's judgment as an experienced and qualified professional engineering firm, familiar with the construction industry. Malcolm Pirnie does not guarantee that proposals, bids or actual Project cost will not vary from Malcolm Pirnie's opinions of probable Construction Cost.

7 GENERAL CONSIDERATIONS

- 7.1 **Changes.** By written notice at any time, Client may change the Basic Services, provided such changes are within the general scope of the services contemplated by this Agreement. In such event, an equitable adjustment both in the compensation for and time of performance of the Agreement shall be made in writing prior to Malcolm Pirnie's performing the changed services.
- 7.2 **Confidentiality.** Malcolm Pirnie will hold secret and confidential all information designated by Client as confidential [**Confidential Information**]. Malcolm Pirnie will not reveal Confidential Information to a third party unless:
- 7.2.1 Client consents in writing;
 - 7.2.2 the information is or becomes part of the public domain;
 - 7.2.3 Malcolm Pirnie lawfully possessed the information before receipt from Client;
 - 7.2.4 applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure; or
 - 7.2.5 failure to disclose the information would pose an imminent and substantial threat to human health or the environment.
- 7.3 **Professional Service.** The Service Instruments furnished under this Agreement are the tangible results of Malcolm Pirnie's professional services for the Services and Malcolm Pirnie shall have the right to use or reuse and retain the copyright of the Service Instruments for its purposes and at its sole risk, without liability to Client
- 7.3.1 **Reuse.** Malcolm Pirnie does not represent the Service Instruments to be suitable for reuse by Client or others for extensions of the Services or on any other project. Any reuse without written verification or adaptation by Malcolm Pirnie for the specific purpose intended is at Client's sole risk, without liability to Malcolm Pirnie. Any such verification or adaptation will entitle Malcolm Pirnie to compensation at rates to be agreed on by Client and Malcolm Pirnie.
- 7.3.2 **CADD.** Malcolm Pirnie may provide information related to the Service Instruments in computer-assisted design and drafting format [**CADD**] to Client. CADD is derived in part from computer software for which Malcolm Pirnie is licensed. These licenses are not transferable. Any unlicensed reuse of CADD may subject the user to liabilities to the software licensor.
- 7.3.3 **Electronic Media.** Either party to this Agreement may rely on the data or information set forth on paper (also known as "hard copies") that the party receives from the sending party by mail, hand delivery, or facsimile as items the sending party intended to send. Data or information sent in electronic media format by one party to the other party are furnished only for the convenience of the receiving party and shall not be relied upon by the receiving party. If there is a discrepancy between the data received in electronic media format and the hard copies, the hard copies govern. Any conclusion or information obtained or derived from the data in electronic media format shall be at the user's sole risk. When transferring documents in electronic media format, the sending party makes no representations as to the long term compatibility, usability, or readability of such documents resulting from the use of software, application packages, operating systems or computer hardware differing from those used by the document's creator.
- 7.4 **Insurance.** Malcolm Pirnie will maintain insurance against the following risks during the term of the Agreement:
- 7.4.1 workers compensation in statutory amounts and employer's liability for Malcolm Pirnie's employees' Services-related injuries or disease;
 - 7.4.2 general liability and automobile liability each in the amount of \$1,000,000 for personal injury or property damage to third parties which arises from Malcolm Pirnie's performance under this Agreement; and

- 7.4.3 professional liability in the amount of \$1,000,000 for legal obligations arising out of Malcolm Pirnie's failure to meet the Standard of Care.
- 7.5 **Interpretation.** This Agreement shall be interpreted in accordance with the laws of the State.
- 7.6 **Successors.** This Agreement is binding on the successors and assigns of Client and Malcolm Pirnie. The Agreement may not be assigned in whole or in part to any third parties without the written consent of both Client and Malcolm Pirnie.
- 7.7 **Independent Contractor.** Malcolm Pirnie represents that it is an independent contractor and is not an employee of Client.
- 7.8 **Disputes.** If any dispute arises out of or relates to this Agreement, or the breach thereof, then in the first instance, representatives of both parties shall endeavor in good faith to negotiate a settlement of the dispute. If such dispute cannot be settled through direct discussions by such representatives of the parties, then higher level representatives of both parties shall endeavor in good faith to negotiate a settlement of such dispute. If such dispute cannot be settled through direct discussion by such higher level representatives of the parties, then the parties agree to submit the matter to mediation before having recourse to a judicial forum. No written or oral representation made during the course of any settlement negotiations or mediation shall be deemed a party admission.
- 7.9 **Notices.** Written notices may be delivered in person or by certified mail, by facsimile, or by courier. Such notices shall be effective upon the date of receipt by the party. Notices shall be delivered or sent to the designated representative of the other party at the address given on the cover page of this Agreement. An address may only be changed by written notice.
- 7.10 **Applicable Law.** If applicable to this Agreement, Malcolm Pirnie will comply with the requirements of:
- 7.10.1 the Equal Employment Opportunity clause in Section 202 of Executive Order 11246, as amended,
- 7.10.2 Utilization of Small and Disadvantaged Business Concerns (Public Law 95-507), and
- 7.10.3 all other federal, state and local laws and regulations or orders issued under such laws.
- 7.11 **Entire Agreement.** This Agreement, including any schedules, attachments and referenced documents, is the entire agreement between Client and the Malcolm Pirnie. Any prior or contemporaneous agreements, promises, negotiations or representations not expressly stated herein are of no force and effect. Any changes to this Agreement shall be in writing and signed by Client and Malcolm Pirnie.
- 7.12 **Waivers and Severability.** A waiver or breach of any term, condition, or covenant by a party shall not constitute a waiver or breach of any other term, condition or covenant. If any court of competent jurisdiction declares a provision of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.
- 7.13 **Effective Date.** Unless stated otherwise in Schedule A, this Agreement is effective on the date shown on the cover page.

8 SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

- 8.1 **Special Provisions.** This Agreement is subject to the following special provisions:
- 8.1.1 None
- 8.2 **Schedules.** The following Schedules are attached to and made a part of this Agreement:
- 8.2.1 **Schedule A** "Scope of Basic Engineering Services and Related Matters"
- 8.2.2 **Schedule B** "Additional or Optional Engineering Services"
- 8.2.3 **Schedule C** "Pricing Schedule"

STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

Water/Wastewater Study Phase Services

Between City of Newburgh and Malcolm Pirnie, Inc.

Execution Authority. This Agreement is a valid and authorized undertaking of Client and Malcolm Pirnie. The representatives of Client and Malcolm Pirnie who have signed below have been authorized to do so.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year shown on the cover page.

CLIENT	MALCOLM PIRNIE, INC.
Date _____	Date _____
By _____	By _____
Title _____	Title _____
Witness _____	Witness _____

Address for Giving Notices:

Address for Giving Notices:

Malcolm Pirnie, Inc.
 44 South Broadway, 15th Floor
 White Plains, New York, 10601
 Attn: Legal Department

Schedule A

Scope of Basic Engineering Services and Related Matters

A.1 Project Administration and Management

A.1.1 A project kickoff meeting will be held for the overall project and will include:

- Review of project goals and main activities.
- Review of project correspondence protocols.
- Review of project schedule.
- Discussion on identifying sensitive areas potentially affected by the CSO discharges.

A.1.2 The project kickoff meeting will be held at the Client's offices. For this meeting, Malcolm Pirnie will:

- Prepare agenda, handouts, and presentations prior to the meeting.
- Facilitate discussion at the meeting.
- Summarize results via meeting minutes, which will be distributed to all attendees.

A.2 Background Review

A.2.1 The following information will be collected by the Client, provided to us by the Client and reviewed by us as part of this task:

- Available sewer mapping and record drawings, for areas selected for use in the hydraulic analysis under Task A.5;
- Available CSO activation and WWTP flow data;
- CSO outfalls and river stage information to assess the ability of the receiving waters to affect the CSO system;
- Historical in-system flow and rainfall data (if available).
- Pump station manufacturer's pump curves, pump capacities, on/off levels and maintenance logs for pump stations identified in Task A.5 as part of the model network

A.2.2 Under this task, Malcolm Pirnie will meet with the Client's staff to review the intended and actual operations of the diversion/regulation facilities as well as the collection system in general. Malcolm Pirnie will also perform site visits at the 12 diversion/regulation structures to verify the configuration and confirm dimensions/elevations. Malcolm Pirnie will schedule the site visit on the same day or an adjacent day to the kick-off meeting in Task A.1.

A.2.3 The data collected in A.2.1 and A.2.2 will be reviewed for completeness and consistency to determine their applicability for use in the model development/calibration and statistical evaluations under subsequent tasks. Data gaps and suspect data will be identified and corrected or eliminated from further evaluations as necessary. The approach for best utilization of the available data for the purposes of the project will be developed under this task.

A.3. Flow Monitoring and Rain Gauging Program

A.3.1 Develop the Flow Monitoring and Rain Gauge Program for a 12 week program. The goals of the program are to capture an adequate number and range of wet weather events for the successful calibration and verification of the hydraulic model (Task A.5). Malcolm Pirnie propose that capturing a minimum six (6) wet weather events with two events classified as small, two as medium and two as large will be sufficient. Should insufficient number of wet weather events be collected after 12 weeks of monitoring due to drought conditions, Malcolm Pirnie will then advise

the Client of additional monitoring needs and associated costs. The additional monitoring costs beyond the 12 weeks are not included in our budget for this scope of services.

- A.3.2 Under this task, a Flow Monitoring and Rain Gauging Plan will be developed that defines the goals of the monitoring program and identifies targeted monitoring locations. This plan will be updated throughout the course of work to reflect the number, type and location of the flow meters and rain gauges.
- A.3.3 Provide, install, maintain and operate up to twenty (20) flow meters and up to four (4) rain gauges. The final number of flow meters and rain gauges to be used will be determined in conjunction with the work performed under Task A.2 and Task A.5.

Work to be performed under this task consists of:

- Flow monitor and rain gauge site selection;
- Install, operate, maintain and collect and process data from up to 20 flow meters and 4 rain gauges;
- Quality control of collected data;
- Flow balancing for wet and dry weather;
- Rain gauge data review;
- Flow data review for performance (scattergraphs and hydrographs), and;
- Prepare a flow monitoring report.

- A.3.4 Because of the relatively small size of the Client's collection system tributary area, it is assumed that no radar rainfall will be required. As such, the proposed budget does not include acquisition of these data. Should during model calibration it is determined that radar rainfall will be required to complete the calibration, an additional up to \$15,000 will be required to acquire the radar rainfall estimates from a qualified vendor.

A.4 Collection System Base Mapping

- A.4.1 Malcolm Pirnie prepared the Geographic Information System (GIS) of the City. The sewer invert elevations were subject to a survey grade field effort; however, rim elevations have an accuracy of +/- 1 foot. Locations of diversion/regulating facilities were only input, and additional field effort will be required define the diversion/regulating facilities

A.4.2 Work to be performed under this task consists of:

- Survey of 12 regulating/diversion facilities and up to one mile of sewer, if required. Surveys to be performed at the regulating/diversion facilities will include elevation and spatial data as required for modeling of the combined sewer system purposes only. Survey to be performed for the up to one mile of sewer will include rim elevations only for datum control.
- Translate survey information onto the existing GIS platform, consistent with the existing datum within the GIS;

A.5 Hydraulic Model Development, Calibration and Validation

- A.5.1 A hydraulic and hydrologic model of the Client's collection system, including critical diversion structures, regulators, overflows, pump stations, portions of the trunk sewer system, and interceptor, will be developed under this task. The model will be used to simulate the effect of various rain events on the sewer system under existing conditions, and to predict system response to precipitation under various improvement scenarios.
- A.5.2 The process of calibrating the model involves adjusting selected hydraulic and hydrologic parameters such that the model reflects the performance of the sewer system as recorded during the Flow Monitoring and Rain Gauging

Program. Malcolm Pirnie will calibrate the model to dry weather conditions and several wet weather conditions. Dry weather calibration is performed to check the hydraulic model representation of the sewer system for connectivity problems as well as the proper representation of sanitary flow and ground water infiltration. Wet weather calibration is performed to refine the hydrologic model representation of storm water runoff and the inflow and infiltration of the runoff into the combined sewer system. The modeled results for selected rainfall events are compared to the monitored results with the goal of matching the two curves as closely as possible, while maintaining realistic values for sub catchment parameters.

- A.5.3 Malcolm Pirnie will calibrate the model using industry-standard guidelines applied on numerous modeling projects throughout the country. A graphical comparison between the observed and the model predicted data will serve as the primary method of measuring the reasonableness of the calibration. Malcolm Pirnie will also provide for quantitative figures for assessing model calibration. The quantitative figures—applied to peak flow, total volume and peak depth—presuppose a good degree of confidence in the observed flow and depth (or pressure) data, and the rainfall data.
- A.5.4 Based on industry-standard performance, stringent calibration guidelines may not be met at all of the meters, for the following reasons: poor quality flow meter data; seasonal variations that cannot be captured with existing modeling techniques; external influences, such as streamflow intrusion; and operational modifications that cannot be modeled (e.g., manual operation of pumps, etc.). Where calibration guidelines cannot be met, Malcolm Pirnie will provide documentation for why the model does not meet the criteria.
- A.5.5 Once the model is considered calibrated, the model will be validated for up to two wet weather events not evaluated as part of the calibration process. The primary purpose of the validation will be to ensure the parameters developed are suitable for a range of events. The primary metrics will be graphical and statistical comparisons of model and monitored peak flows and storm volumes for the defined validation events.
- A.5.6 The following work will be performed under this task:
- Import the collection system mapping (Task A.4) and sewer hydraulic characteristics into modeling software;
 - Build the regulating and overflow structures into modeling software;
 - Delineate sub-catchments;
 - Characterize sub-catchments for features such as area, slope, width, length, population and soil characteristics;
 - Calibrate the model for dry weather;
 - Calibrate the model for three (3) wet weather events;
 - Validate the model for up to (2) wet weather events; and
 - Document the model development, calibration and verification process and results.

A.6 Document Nine Minimum Control Implementation

- A.6.1 The USEPA CSO control policy lists nine minimum control (NMC) elements that should be addressed as appropriate by the CSO planning. These nine elements of the LTCP are:
- Characterization, monitoring and modeling activities.
 - A public participation process.
 - Consideration of sensitive areas.
 - Evaluation of CSO control alternatives.
 - Cost/performance considerations for control alternatives.
 - Operational plan revisions.

- Maximization of treatment at the existing POTWs for wet weather flows.
- A CSO control implementation schedule.
- Identifying a post-construction monitoring program.

Additionally, the NYS DEC requires each NPDES permit holder with a combined sewer system to develop and implement Best Management Practices (BMPs). Under this task, Malcolm Pirnie will review the Client's current implementation of the NMCs and BMPs and provide recommendations (if necessary) for further improvements to increase their efficacy.

A.7 Wastewater Treatment Plant Wet Weather Process Capacity Study

- A.7.1 Malcolm Pirnie will establish theoretical and demonstrated process capacities for the WWTP. Five years worth of Discharge Monitoring Reports and other operating data from the WWTP will be analyzed. The assessment of the existing facilities will begin with a summary of the existing wastewater flows, loads, and permit limits. An evaluation of the existing WWTP processes will then be performed. This evaluation will involve a review of the operating conditions of each major "wet-stream" process against standard design criteria to estimate theoretical capacities. The results of this analysis will be compared against historical operating data to establish trends in changes of process unit performance under increased flows during wet weather events.
- A.7.2 Malcolm Pirnie will assess past population growth trends and potential planned developments within the sewer areas tributary to the WWTP to develop reasonable projections of future year population and wastewater flows. Service areas populations and wastewater flows for the five-, 10- and 20-year planning periods will be developed for aiding in the dynamic modeling, to be performed under Task A.7.3 and potential evaluation of conveying additional flow to the WWTP. For this task, Malcolm Pirnie will rely on information provided by the Client's Planning Department.
- A.7.3 Develop a dynamic process model (flow variation) for the WWTP to model the impact of various scenarios of current and future flows and loadings. The objective of the model development will be to examine how various wet weather variations in flow and organic loading would affect the treatment processes and effluent quality.

Malcolm Pirnie previously prepared a BioWin model by EnviroSim Associates, Ltd for the assessment of the secondary treatment facilities at the WWTP for a NYSEDA Energy Conservation Study. Malcolm Pirnie will update the model with respect to modifications completed at the WWTP since the model of developed. The approach for the development of each dynamic model is as follows:

- Define objective;
- Assemble available plant information;
- Request additional plant information as needed;
- Calibration
- Set up plant configuration in simulator, specifying:
 - Process sizes.
 - Connectivity of unit processes, including recycle stream flow rates.
 - Select process models for each process.
 - Wastewater temperature and influent loads.
 - Influent wastewater fractions (e.g., degradable soluble, inert soluble, degradable particulate Chemical Oxygen Demand).
 - Stoichiometric and kinetic parameters.

Between City of Newburgh and Malcolm Pirnie, Inc.

A.7.4 Upon completion of the calibration, up to five model simulations will be performed including:

- Dry weather flow analysis.
- Wet weather flow analysis.

A sensitivity analysis would finally be conducted for each model simulation. The sensitivity analysis requires adjusting the most sensitive parameters (e.g., dissolved oxygen). As a result of these evaluations, the Team will determine the existing maximum wet weather capacity for the major WWTP wet stream processes. For the wet weather flow analysis, the dynamic modeling can be used to evaluate the blending of primary effluent with the activated sludge process to determine the following:

- The excess primary treatment that may be available versus the activated sludge system.
- The appropriate proportions for blending primary effluent with the activated sludge system and still achieve all permit limits.
- The determination of the maximum sustained flow and loading that the activated sludge system can manage without exceeding the permit limits whether during or following a wet weather event.

A.8 Survey and WWTP Hydraulic Modeling

A.8.1 The objective of the evaluation will be to determine how much wastewater is able to pass through the various structures and processes without sacrificing flow control or overflowing tanks and chambers. Malcolm Pirnie will review record drawings to determine locations of critical water surface elevations, weirs, piping and structures to be surveyed and then perform the survey of the WWTP.

A.8.2 Upon completion of the surveying work, a hydraulic evaluation will be performed to determine the capacity through the WWTP and identify any deficiencies in the piping, channels, weirs and other hydraulic structures in the plant. The evaluation will utilize hydraulic modeling software capable of accounting for equal flow distribution among process units. The models will be developed based on the plant record drawings and calibrated based on the field data surveyed. The calibrated model will then be utilized to determine the hydraulic capacity and to evaluate the hydraulics of potential treatment alternatives.

A.9 Wet Weather WWTP Capacity Alternative Brainstorming and Evaluation

A.9.1 In order to capture the institutional knowledge of the WWTP staff Malcolm Pirnie will conduct a brainstorming session with the WWTP management to discuss future evaluation steps, as well as potential alternatives to increase the plant wet weather capacity. The alternatives development will be supported by the dynamic process modeling and hydraulic modeling and will generally consider the following treatment objectives:

- At minimum, providing primary treatment and disinfection to all plant influent flows.
- Maximizing secondary system capacity.
- Minimizing secondary system bypasses (SSBs) by providing additional on-site storage or enhanced primary treatment (chemically enhanced primary clarification and high rate treatment processes).
- Alternatives will then be screened based on regulatory, operational, and functional criteria. The final selection of the recommended alternatives will then be made in conjunction with CSO control alternatives under Task A.12, based on the economic evaluations consisting of estimating capital and annual operating costs.

Additionally, the NYSDEC Regulations Subpart 750-2 requires development of the Flow Management Plan for the facilities which have reached or exceeded 95 percent of their design capacity on an average annual basis. Therefore,

maximizing wet weather peak flows at the plant should be balanced with the potential to trigger the WWTP Flow Management Plan requirements under the NYSDEC regulations. Additional process and hydraulic modeling may be required as a result of the options generated at the brainstorming session that are not included in this scope of services.

A.10 Baseline Conditions Assessment

A.10.1 The evaluation performed under this task qualitatively and quantitatively defines the performance of the combined sewer system. This involves not only estimating the frequency and volume of combined sewer overflow but understanding the triggers that cause the CSO system to activate. The results from the existing condition evaluation become the baseline for subsequent evaluations of the CSO control alternatives.

A.10.2 The evaluation will be performed using a typical 5-year period. This typical period will be developed using available local/regional rainfall data from the National Oceanic and Atmospheric Agency (NOAA). The 5-year typical period will have embedded within it a typical 1-year period. This enables the evaluation of the existing system, and later the evaluation of planned system, for both small and large rainfall years.

A.10.3 The following work will be performed under this task:

- Obtain long-term rainfall data;
- Develop typical 5-year period;
- Estimate annual wet-weather percent capture;
- Estimate annual CSO volume and frequencies;
- Estimate total duration of overflow activation (total hours);
- Estimate average and peak CSO flows;
- Define conditions that activate each CSO and
- Define key performance points in the collection system.

A.11 Develop CSO Compliance Strategy

A.11.1 Sensitive Area Identification.

The USEPA CSO control guidelines require that the LTCP consider sensitive areas that may be affected by CSO discharges. Sensitive areas as defined by USEPA include:

- Outstanding National Resource Waters
- National Marine Sanctuaries
- Waters with threatened or endangered species or their designated critical habitat
- Primary contact recreation waters, such as bathing beaches
- Public drinking water intakes or their designated protection areas
- Shellfish beds

The overall goal of considering sensitive areas with regard to CSO control is to develop an overall awareness of the locations of sensitive areas to guide development and selection of CSO control alternatives, as well as to identify priorities for project implementation.

Under this task, Malcolm Pirnie will conduct a workshop with the Client's staff to identify sensitive areas Hudson River near the City of Newburgh's CSO outfalls that may be affected by the CSO discharges. These areas will be considered during development and evaluation of the CSO control alternatives under the subsequent tasks. For budget

purposes, Malcolm Pirnie has assumed that this workshop will be conducted at the same time with the review of baseline conditions and the screening of CSO technologies.

A.11.2 Receiving Water Sampling and Characterization.

Under Task A.11.2, Malcolm Pirnie will conduct a limited sampling program to assess the effect of the combined sewer discharges on the local receiving water quality. The plan will consist of dry and wet weather discrete sampling and laboratory analyses of receiving water samples taken at four shoreline sites along the Hudson River and one on Quassaick Creek. All samples will be taken from shore locations with public access without using a boat.

The sampling period will begin in September 2011 and last through November 2011 to cover at least a portion of the river recreational season. Two (2) dry weather sampling events will be performed, each with a minimum of 48 hours without rainfall (less than 0.01 inches of rain) preceding the sampling event. For each dry weather event, one analytical sample will be collected a total of 10 samples (2 sampling events at five river/creek locations). The field measurements that will be performed at each sampling position are: dissolved oxygen, temperature, conductivity and pH. Laboratory analyses for the samples will be performed for fecal coliform only.

The wet weather sampling will be performed at the same locations for up to two (2) storm events during the same period as the dry weather sampling. The goal is to collect samples over a 36- to 48-hour period starting as soon as practical following the commencement of a CSO discharge at the major overflow locations and finishing after the rain has ended and storm water runoff has subsided. A total of 60 discrete grab samples (6 samples per site x 5 sites x 2 events) will be taken during the receiving water wet weather monitoring period and tested for fecal coliform.

A database will be maintained with the field measurements and laboratory testing results for each dry and wet weather sampling event. In addition to laboratory analyses and field parameters, river flow data, meteorological data (rainfall, cloud cover and wind speed and direction), and tide information will also be collected and maintained in the project database.

Upon completion of the dry and wet weather monitoring, the water quality data will be evaluated to identify CSO and non-CSO impacts to the receiving water bodies. The data will be reviewed for trends during and following wet weather events. Figures and tables will be developed to illustrate the changes in water quality parameters tested during the monitoring period. Dry weather and wet weather baseline conditions will also be summarized for use in preliminarily evaluating water quality in comparison to NYSDEC water quality standards and New York State Department of Health (NYSDOH) criteria for bathing use.

Based on the results of the evaluation of the water quality sampling data, Malcolm Pirnie may recommend additional CSO outfall and in-stream sampling and/or modeling of the Hudson River to simulate bacteria conditions under both existing conditions and under selected planning scenarios. The additional sampling and development, calibration and application of a water quality model is not included in the scope/budget for this project. Should it be determined that additional sampling and water quality modeling will be necessary to support the LTCP development, Malcolm Pirnie will work with the Client to develop an appropriate scope and fee.

A.11.3 Selection of Compliance Approach

The US EPA CSO control policy provides for two compliance approaches: presumptive and demonstrative. Each approach has its advantages and disadvantages and selecting the right approach may greatly affect the CSO LTCP development and implementation costs. The demonstrative approach typically requires more significant upfront planning expenditures associated with the receiving stream water quality sampling and model development to demonstrate that the proposed program meets the WQ standards and the remaining CSOs do not preclude the WQS attainment. The presumptive approach is largely based on the assumption that if the combined sewer system meets certain control criteria, it is presumed to meet the WQ standards. The USEPA Policy specifies three presumptive control criteria with 85% capture of wet weather flows and reducing frequency of overflows to 4 to 6 events per typical

year being most commonly used for CSO LTCP development. The CSO control policy also provides considerations for small systems with populations under 75,000, which allows at the discretion of the New York State Department of Environmental Conservation (NYS DEC) to reduce the scope of the LTCP to fewer formal elements. Based on our experience with CSO control planning for similarly sized (small) systems, using a presumptive approach may be more cost effective for the City of Newburgh. As such, our proposed scope and budget do not include water quality sampling for CSO discharges and receiving waters but rather focus on the evaluating and improving the Client's collection system performance.

Under this task, Malcolm Pirnie will use the existing condition assessment information from Task A.10, to confirm our initial assumption for selecting the presumptive approach and also determine which presumptive approach criterion (85% capture or 4 to 6 overflows per typical year) should be used as the Client's CSO compliance strategy. Should the water quality sampling and/or modeling be considered necessary or beneficial for the Client's compliance strategy, Malcolm Pirnie will advise the Client of additional budget and schedule needs.

A.11.4 Malcolm Pirnie will conduct a regulatory review meeting with the NYS DEC to facilitate consensus building with the Department prior to assessing CSO control technologies and alternatives.

A.12 CSO Control Technologies and Alternatives Evaluation

A.12.1 The purpose of this Task is to identify technologies that are appropriate for CSO Control in the City of Newburgh and to develop those into alternatives. Using the EPA CSO LTCP guidance and our experience with CSO control planning for numerous municipalities in New York and nationwide, Malcolm Pirnie will review the available CSO control technologies to select those that may be feasible for the City of Newburgh. Based on our current knowledge of the combined sewer system, it is our expectation that CSO technologies that will be prescreened include:

- Existing system optimization
- Screening and/or disinfection
- Remote storage and treatment facilities (overflow retention facilities)
- Partial sewer separation
- Additional conveyance
- Increased WWTP wet weather treatment capacity
- Green infrastructure

A.12.2 Malcolm Pirnie will perform a feasibility analysis of relocating the existing north interceptor adjacent to the waterfront redevelopment area. The relocation of the existing north interceptor provides key opportunities to incorporate CSO control requirements and also redevelopment requirements of currently vacant land adjacent to the waterfront.

A.12.3 The feasible technologies will be organized into alternatives. As part of this task, Malcolm Pirnie will evaluate potential CSO consolidation opportunities to reduce a number of satellite storage and treatment facilities throughout the system.

The alternatives could include, but are not limited to:

- Sewer separation (typically required by EPA as a benchmark for other alternatives);
- Sewer system optimization and real time control
- Green infrastructure sensitivity analysis
- Satellite storage facilities
- Conveyance of all overflow to a central wet weather treatment facility;

- Conveyance and storage of overflow in a new interceptor with treatment through existing WWTP facilities; and
- Combinations of the above

A.12.4 This task budget assumes development and evaluation of up to four alternatives. Malcolm Pirnie and the Client will jointly select, via a workshop, the alternatives to be further evaluated. Workshop agenda, handouts, and presentations will be prepared prior to the meeting. The results will be summarized via meeting minutes, which will be distributed to all attendees.

A.12.5 Each selected alternative will be conceptually sized for up to five different levels of CSO control. The alternative facilities sizing and evaluations of alternatives under this project will be performed using the collection system model. As part of the alternatives evaluation, the advantages, disadvantages, and constructability of each alternative will be examined under existing and future conditions. The proposed budget assumes that the Client will provide Malcolm Pirnie with population and development projections for the next 20 years.

A.13 Cost-Benefit Evaluation and CSO Control Recommendation

A.13.1 This Task involves comparing the costs to the benefits for each selected alternative and choosing a single alternative as the Recommended CSO Control. Estimates of capital and operation and maintenance costs will be prepared for each of the selected alternatives. The quantitative benefits of each alternative are developed in terms of the change in CSO performance. Costs and benefits are then plotted to identify two keys factors:

- Comparatively, the most cost-effective CSO Control Alternative and
- The point of diminishing returns.

A.13.2 The analysis will quantitatively identify the Recommended CSO Control improvements and the Level of Control. Malcolm Pirnie and the Client will jointly consider, via a project workshop, any qualitative aspects of CSO Control that would affect the Client's adopting with the Recommended CSO Control Method or the Level of Control.

A.13.3 The following work will be performed under this task:

- Developing conceptual-level capital cost estimates (AACE Class 5) for the evaluated alternatives.
- Determining the benefits of each evaluated alternative. The benefits of each alternative will be estimated in terms of increased percent capture, reduced overflow frequency, reduced number of overflow activation hours, and reduced total CSO volume for a typical year.
- Estimate operations and maintenance (O&M) costs for the evaluated alternatives.
- Complete present-worth cost evaluations for alternatives.
- Develop cost-benefit curves and establish the "knee-of-the-curve" for each alternative (the "knee-of-the-curve" is the point of deflection along the cost-benefit curve where additional costs begin to produce diminishing benefits).
- Select the recommended alternative and cost-effective level of control.

A.14 Preliminary Affordability Analysis and Implementation Schedule

A.14.1 This task considers the cost of the CSO Long-Term Control Plan with respect to the Median Household Income (MHI) of the residents of the City of Newburgh and develops a schedule for the implementation of the plan. The MHI is a key financial indicator that is considered by the regulators when amount of time that will be allowed for the implementation of the CSO LTCP. The work performed under this task will include completing Phase I (Residential Indicator) of the US EPA CSO affordability methodology. It does not include the performance of Phase II (Permittee Financial Capability Indicators) evaluations as Malcolm Pirnie assumes that the Client is a financially distressed municipality

with weak financial capability indicators (as defined by the EPA methodology). This task does not include a rate study or such work to assess the sewer rates necessary to fund the plan.

A.14.2 Malcolm Pirnie will develop two implementation schedules. The first schedule will reflect the amount of time that is required to engineer and construct the recommended facilities based on engineering judgment. The second schedule will reflect a timeline constrained, if necessary, to meet the timetable like to be allowed for the plan implementation, based on the MHI.

A.14.3 The task activities include:

- Obtain and review information on median household income for the Client.
- Estimate future rates as percentage of the median household income.
- Summarize the evaluation as a section in the overall report.

A.15 Public Participation

A.15.1 Assist the Client with conducting public participation activities. Public participation is a requirement of the CSO policy. Our budget allows for a total of two public meetings at the following milestones:

- After evaluation of the existing conditions and identification of sensitive areas.
- After CSO control technologies have been identified, completion of the economic impact evaluation and LTCP schedule development.

A.15.2 For each meeting, Malcolm Pirnie will prepare a brief presentation and will be available to answer questions posed by the public at these meetings. Comments from the public meetings will be collected and incorporated, as necessary, into the appropriate deliverables.

A.16 LTCP Report

A.16.1 The results of Tasks outlined in the Basic Scope of Services and the Additional Scope of Services will be documented in the LTCP.

The LTCP will address the elements required to the level of detail included in this scope including the following:

- Discuss the approach used in development of the updated LTCP.
- Present Sensitive Areas.
- Summarize CSO control technologies and alternatives.
- Summarize the recommended alternative, including benefits, constructability, estimated project costs, and implementation schedule.
- Discuss the next steps for implementation of the recommended alternative.
- Post-construction monitoring recommendations.

A.16.2 One set of the Client's comments will be addressed and five copies of the report will be submitted to the Client for transmittal to NYS DEC. In our experience, the NYS DEC review of the LTCP report typically results in subsequent discussions and negotiations of the proposed improvements and their implementation schedule. Negotiation assistance, addressing NYS DEC comments and/or the LTCP revisions based on the negotiations outcome are not included in our scope and budget.

Schedule B
Additional or Optional Engineering Services

- B.1 The Scope of Additional or Optional Engineering Services consists this of page plus the following documents, attached and made part of this Agreement:

Schedule C
Pricing Schedule

C.1 The Pricing Schedule consists of this page plus the following documents, attached and made part of this Agreement:

a. Summary of Charges

C.2 Terms of Payment

C.2.1 **Lump Sum.** For Basic Services under Section 1, Client shall pay Malcolm Pirnie a Lump Sum of \$950,000.

C.2.2 **Invoices.** Malcolm Pirnie will submit invoices to Client for each month during which services were performed. Invoices may include carrying charges at 1.5% per month for delinquent payments outstanding over 30 days and applicable sales or value-added taxes.

RESOLUTION NO.: 174 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN ACCESS AGREEMENT WITH ENTITIES KNOWN AS
“POTENTIALLY RESPONSIBLE PARTIES” OR “PRP’S” IN
CONNECTION WITH THE CLEAN-UP AND ENFORCEMENT
ACTION BROUGHT BY THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGARDING
THE “DRUM CACHE AREA” WITHIN
THE CITY OF NEWBURGH LANDFILL SITE**

WHEREAS, the City of Newburgh (City), E.I. DuPont de Nemours & Company (DuPont) and Bayer CropScience, Inc. as Successor-in-Interest to Stauffer Chemical Company (BCSI) (collectively referred to as “the Parties” and individually referred to as a “Party”) have been alleged by the United States Environmental Protection Agency (EPA) to be potentially responsible parties in connection with the Drum Cache Area located within the City of Newburgh Landfill Site situated in the City of Newburgh, Orange County, New York (the “Site”), as the term “Drum Cache Area” is defined in and is the subject of an EPA Administrative Settlement Agreement and Order on Consent for a Removal Action among DuPont, BCSI and EPA, Index Number CERCLA-02-2010-200X, effective October 4, 2010 (the “AOC”) and the approximate limits of which are shown on Exhibit A to the AOC;

WHEREAS, the City is the sole owner of that portion of the Site known as tax map no. Section 5 Block 1 Lot 16 as shown on the tax map of the City of Newburgh (the “City Property”); and

WHEREAS, EPA has alleged that DuPont and BCSI arranged with the City for the disposal of drummed waste at the Drum Cache Area during the time that the Site was in operation; and

WHEREAS, the Parties have respectively incurred costs and expect to continue to incur costs in responding to environmental conditions present at or related to the Drum Cache Area pursuant to the AOC (“Environmental Conditions”), and thereby each of the Parties has Claims, as hereinafter defined, or potential Claims, against the others;

WHEREAS, the Parties believe it is in the best interest of each of them and collectively to settle and to compromise without litigation certain of the disputes among them, and between them and the EPA, and others, concerning the Environmental Conditions and related issues; and

WHEREAS, so as to effectuate their individual and collective goals, the City is willing to and does hereby provide access to certain areas of the City Property, under certain term and conditions to enable DuPont and BCSI and other permittees to perform DuPont's/BCSI's Obligations under the AOC;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the Access Agreement with other entities known as "PRP's", in substantially the same form as attached hereto and made part hereof with other provisions as Corporation Counsel may require, for access to the "Drum Cache Area" within the City of Newburgh Landfill for to effectuate the remediation of the "Drum Cache Area" as required by the AOC and to resolve differences among such parties so as to avoid legal action by and between the "PRPs" regarding clean-up of this site.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

SETTLEMENT AND ACCESS AGREEMENT

AMONG

CITY OF NEWBURGH,

E.I. DUPONT DE NEMOURS & COMPANY

AND

BAYER CROPSCIENCE, INC.

(SUCCESSOR-IN-INTEREST TO STAUFFER CHEMICAL COMPANY)

This Settlement Agreement (“Agreement”), effective as of [_____], 2011] (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”;
- B. E.I. DuPont de Nemours & Company, its officers, employees, corporate predecessors, subsidiaries, affiliates, insurers, agents, representatives, successors and assigns, collectively referred to in this Agreement as “DuPont”; and
- C. Bayer CropScience, Inc. (Successor-in-Interest to Stauffer Chemical Company), its officers, employees, corporate predecessors, subsidiaries, affiliates, insurers, agents, representatives, successors and assigns, collectively referred to in this Agreement as “BCSI.”

WHEREAS, the City, DuPont and BCSI (collectively referred to as “the Parties” and individually referred to as a “Party”) have been alleged by the United States Environmental Protection Agency (“EPA”) to be potentially responsible parties in connection with the Drum Cache Area located within the City of Newburgh Landfill Site situated in the City of Newburgh, Orange County, New York (the “Site”), (i) as the term “Drum Cache Area” is defined in and is the subject of an EPA Administrative Settlement Agreement and Order on Consent for a Removal Action among DuPont, BCSI and EPA, Index Number CERCLA-02-2010-200X, effective October 4, 2010 (the “AOC”) and (ii) the approximate limits of which are shown on Exhibit A, attached hereto;

WHEREAS, the City is the sole owner of that portion of the Site known as tax map # 5-1-16 as shown on the tax map of the City of Newburgh (the “City Property”);

WHEREAS, EPA has alleged that DuPont and BCSI arranged with the City for the disposal of drummed waste at the Drum Cache Area during the time that the Site was in operation;

WHEREAS, the Parties have respectively incurred costs and expect to continue to incur costs in responding to environmental conditions present at or related to the Drum Cache Area pursuant to the AOC ("Environmental Conditions"), and thereby each of the Parties has Claims, as hereinafter defined, or potential Claims, against the others;

WHEREAS, the Parties believe it is in the best interest of each of them and collectively to settle and to compromise without litigation certain of the disputes among them, and between them and the United States, as hereinafter defined, and others, concerning the Environmental Conditions and related issues, except as otherwise provided herein; and

WHEREAS, so as to effectuate their individual and collective goals, the City is willing to and does hereby provide access to the Agreement Areas, as hereinafter defined, under the conditions described in this Agreement to enable DuPont, BCSI and other Permittees, as hereinafter defined, to perform DuPont's/BCSI's Obligations under the AOC, as hereinafter defined; and

WHEREAS, Section XI of the AOC provides that EPA and its designated representatives and agents and the New York State Department of Environmental Conservation ("DEC") and its designated representatives and agents (EPA, DEC, and their respective representatives and agents, collectively referred to as the "Government") shall have such access and such other rights and permissions as are provided in the AOC.

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) "Agreement Areas" means that portion of the City Property to which DuPont and BCSI are being granted access hereunder, as described in and shown on Exhibit A, in order to perform the Work as the term "Work" is defined in the AOC, and to perform such other activities as may be necessary or as required by the AOC (the Work and the conduct of such other activities as may be necessary or as required by the AOC, collectively referred to as "DuPont's/BCSI's Obligations").
- (b) "Claim" or "Claims" means any and all manner of action or actions, causes of action, suits, damages (whether general, special or punitive), debts, liabilities, demands, orders, notices, requests, directives, listings, legal requirements, violations, obligations, costs, expenses, losses, attorneys' fees, liens, cost recovery, indemnities and contributions of any kind and nature whatsoever, whether known or unknown, suspected or unsuspected, or asserted or capable of being asserted, and whether based on contract, tort, statute, common law or in equity, or other legal or equitable theory of recovery, including Claims

that arose in the past or that may arise in the future, relating in any way to the Environmental Conditions and to DuPont's/BCSI's Obligations at or related to the Drum Cache Area pursuant to the AOC.

- (c) "Permittees" (individually a "Permittee") means DuPont, BCSI and each of their employees, agents, representatives, successors, assigns, consultants, contractors, and subcontractors which are involved in the performance of DuPont's/BCSI's Obligations.
- (d) "United States" means the United States government and its agencies, including, but not limited to, EPA and the United States Department of Justice.

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, DuPont's/BCSI's Obligations or the Site.
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 DuPont and BCSI collectively to periodically and timely inform the City of the activities they are undertaking to implement their responsibilities hereunder and of the City to periodically inform DuPont and BCSI 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, DuPont and BCSI 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 Agreement Areas to any Permittee for the performance of DuPont’s/BCSI’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: allowing the clearing of the Agreement Areas so that access to them is unimpeded at all times that Permittees are performing DuPont’s/BCSI’s Obligations; and ensuring that the Permittees have

(i) exclusive access to that portion of the Drum Cache Area and the surrounding buffer area on the City Property, without interference by anyone, subject to the Permittees fulfilling their obligation to control access to the Drum Cache Area using a highly visible temporary construction fence or other barrier during the mobilization phase and to the City fulfilling its obligation to repair and maintain the perimeter fence surrounding the Site; and

(ii) unimpeded access to, and the right to use, the other portions of the Agreement Areas on an as-needed and ongoing basis;

during the performance of DuPont's/BCSI's Obligations. A list of activities to be undertaken by the City and services and other measures to be provided to Permittees by the City pursuant to this Agreement is set forth in Exhibit B, attached hereto; such list may be modified by written agreement among the Parties.

(b) Provide to the Government access to the Agreement Areas and all rights and permissions to the full extent as set forth in Section XI of the AOC, which is incorporated by reference into this Agreement; provided, however, that DuPont and BCSI are not EPA's representative with respect to liability associated with Site activities.

(c) Provide written notice of this Agreement and of the AOC to any prospective purchaser or lessee of any interest in any portion of the Agreement Areas.

(d) Notify DuPont and BCSI at least thirty (30) days prior to any transfer of ownership or any other interest in any portion of the Agreement Areas.

- (e) Perform all owner-related responsibilities under the Settlement Agreement between the United States and the City, including among other things, in coordination with DuPont and BCSI, assisting DuPont and BCSI in their performing the requirements of Section XI of the AOC.

- (f) Cooperate with DuPont and BCSI in the performance of their responsibilities pursuant to Paragraph 8 below: (i) by allowing DuPont, BCSI and any Permittee to modify any element, aspect, component, portion or part of the Work and/or DuPont's/BCSI's Obligations at any time within the Agreement Areas to ensure that such element, aspect, component, portion or part is fulfilling its intended purpose, to improve its functioning, to replace equipment, or for any other reason as required or approved by EPA; and (ii) by not altering or compromising the integrity of any element, aspect, component, portion or part of the Work and/or DuPont's/BCSI's Obligations without the prior written consent of DuPont and BCSI; provided, however, that DuPont, BCSI and any Permittee shall provide the City with such prior notice as is reasonable under the circumstances in the event of any material modification of the Work and/or DuPont's/BCSI's Obligations.

- (g) Support DuPont and BCSI in the performance of DuPont's/BCSI's Obligations, among other things, by providing in draft form, in advance of submittal to the United States and any regulatory agency, all comments, questions, concerns or other communications concerning the Work or other of DuPont's/BCSI's Obligations, the AOC or any related matter and by working cooperatively with DuPont and BCSI to resolve any such comments, questions or concerns prior to any communication with the United States or DEC with respect thereto unless the City deems the circumstance to be an emergency

with respect to public health or safety such that it believes it necessary to seek immediate action by the United States or any regulatory agency.

- (h) In coordination with DuPont and BCSI and as necessary to enable them to fulfill DuPont's/BCSI's Obligations, provide access control to the Site and Site security (i) by repair and maintenance of the perimeter fence and (ii) by locking the gates to the City Property during non-working hours or, alternatively, by providing security personnel thereat; provided, however, that the activities undertaken by the City pursuant to (i) and (ii) of this Subparagraph (h) shall not prevent DuPont and BCSI from having timely, full, exclusive and unrestricted access to the portion of the Drum Cache Area and the surrounding buffer area located on the City Property, without interference by anyone.

- (i) Assist DuPont, BCSI and any Permittee, through such means as transportation and re-emplacment if authorized by EPA or DEC and following consultation and coordination with the City by DuPont, BCSI and any Permittee, in leaving non-hazardous materials, including, but not limited to, drums containing non-hazardous materials, at the City Property, including the portion of the Drum Cache Area on City Property, as more particularly described in Exhibit B.

- (j) Provide Permittees with all municipal permits, licenses, approvals and other authorizations that are necessary for the performance of DuPont's/BCSI's Obligations on, in or at the Agreement Areas and facilitate, to the extent allowed by law, Permittees' obtaining any other permits, licenses, approvals and other authorizations on, in or at other City-owned property, or as otherwise subject to the jurisdiction of the City, that are necessary for the performance of DuPont's/BCSI's Obligations.

(k) Be responsible for the costs it incurs in implementing its responsibilities under this Paragraph 7.

(l) In the event that, following a period of thirty (30) days after the City's receipt of written notice from DuPont, BCSI or any Permittee that the City has breached this Agreement in some respect, within which period of time the City has the opportunity to cure such breach, the City has failed to fulfill any obligation of this Agreement relating in any way whatsoever to access, including, but not limited to, those set forth in Section XI of the AOC, the City shall not oppose, and shall comply with, an applicable order by a court of competent jurisdiction, and shall indemnify, defend and hold DuPont, BCSI and any Permittee harmless from and against 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.

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

(a) Except as otherwise provided in this Agreement, implement all requirements of the AOC, including, but not limited to, the Work and all other of DuPont's/BCSI's Obligations, including, without limitation, the payment of Response Costs, as such term is defined in the AOC.

(b) DuPont and BCSI shall require that any of their contractors or subcontractors who (i) perform any portion of the Work at the Site or (ii) enter onto the Site shall provide the insurance coverages herein on the terms set forth, at their expense (subject to reimbursement by DuPont and BCSI), 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 Work, DuPont and BCSI shall require the contractors and subcontractors retained by DuPont and BCSI 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 DuPont and BCSI.

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 Work (including subsequent policies purchased as renewals or replacements);
- (2) DuPont's and BCSI's contractors will maintain similar insurance for at least three (3) years following EPA's determination that the removal action described in the AOC has been completed, including the requirement of adding the City as an additional insured;
- (3) If the insurance is terminated for any reason, DuPont and BCSI agree to purchase an unlimited extended reporting provision to report claims arising from the Work; and
- (4) Prompt notice shall be given to the City of circumstances or incidents that might give rise to future claims with respect to the Work performed pursuant to the AOC.

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

- (c) 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 EPA and or any other regulatory agencies of the United States or the State of New York pursuant to the AOC relating to the Agreement Areas and to DuPont's/BCSI's Obligations.
- (d) Cooperate with the City in the performance of its obligations pursuant to Paragraph 7.
- (e) Following the satisfactory completion of all of DuPont's/BCSI's Obligations and the termination of the AOC as determined by EPA, take all actions necessary to terminate this Agreement.
- (f) In the event that, following a period of thirty (30) days after the receipt by DuPont and BCSI of written notice from the City that DuPont and BCSI or any Permittee has breached this Agreement in some respect, within which period of time DuPont and BCSI or any Permittee has the opportunity to cure such breach, DuPont and BCSI or any Permittee has failed to fulfill any obligation of this Agreement, DuPont and BCSI 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. **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 City hereby acknowledges and agrees that DuPont and BCSI, at their sole expense, will be permitted to record the Memorandum of Settlement and Access Agreement as set forth in Exhibit C, attached hereto. DuPont and BCSI will, simultaneous with executing this Agreement, execute and deliver the Termination of Memorandum of Settlement and Access Agreement, attached hereto as Exhibit D, which will be held by the City of Newburgh's Corporation Counsel in escrow until certification by EPA that the removal action being undertaken by DuPont and BCSI pursuant to the AOC has been completed and EPA has terminated the AOC. At such time, the City of Newburgh's Corporation Counsel is hereby authorized to file the Termination of Memorandum of Settlement and Access Agreement, thereby discharging the Memorandum of Settlement and Access Agreement of record.

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, DuPont and BCSI each agrees to forgo any and all Claims against each of the other Parties, 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 any portion of the City of Newburgh Landfill outside the Drum Cache Area or to any other area; or (ii) to any other potential claim of a Party, or to any costs, not explicitly covered by this Agreement.

11. **Addressees for Purposes of Notice:**

(a) For the City:

(b) For BCSI:

With a copy to:

John L. Greenthal, Esq.
Nixon Peabody LLP
677 Broadway, 10th Floor
Albany, New York 12207
jgreenthal@nixonpeabody.com
518-427-2670

(c) For DuPont:

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 superceded by this Agreement. This Agreement can be amended, including, but not limited to, an expansion of the Agreement Areas for the performance of DuPont's/BCSI's 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. 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:

Dated: _____

**BAYER CROPSCIENCE, INC. (SUCCESSOR-IN-INTEREST TO STAUFFER
CHEMICAL COMPANY)**

By: _____
Its:

STATE OF)
) 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

EXHIBIT A

EXHIBIT B

CONSTRUCTION PHASE

Access to site, including:

- Exclusive access by DuPont/BCSI to area designated as the Drum Cache Area and surrounding buffer area;
- Staging and support area. In the portion of the area north of the existing City impoundment yard along the Drum Cache Area, DuPont/BCSI require exclusive access once excavation of the Drum Cache Area commences. Prior to initiating excavation in the Drum Cache Area, assistance from the City to level and perform light clearing (removal of grasses, brush, shrubs) in the staging and support area may be required. DuPont/BCSI also require access to the portion of the area northeast of the impoundment yard where the City presently stockpiles material;
- Existing ingress and exit routes for trucks and support vehicles. The City agrees to make minor repairs to these roads including filling potholes and smoothing of rough surfaces. DuPont/BCSI would make improvements to the existing ingress and exit route if necessary to support the additional vehicle load resultant from their undertaking the Removal Action under the Settlement Agreement.

Provision of temporary utilities, including:

Potable water (for equipment decontamination and dust control). The City will provide access to a water hydrant near the site for use by DuPont/BCSI, without cost to DuPont/BCSI for connection or water consumed. DuPont/BCSI will provide a water truck or trailer for collection/movement/storage of water as needed during the Removal Action for the Drum Cache Area.

Site security, including:

DuPont/BCSI will repair the fence on the property containing the DuPont-Stauffer Landfill, although it is the sense of the companies' representatives that the damage was caused by trees falling from the City's property. Prior to repairing this section of fence, debris from the City Landfill that appears to have fallen onto the DuPont-Stauffer Landfill property will be collected by Dupont/BCSI and placed on the City Landfill at a location to be determined by the City.

- The fence surrounding the remainder of the Landfill will be inspected by the City and, per EPA, repaired if necessary by the City.
- Lock the vehicle gates to the Site during non-working hours, or provide security personnel if the City is unable to secure the gates. DuPont/BCSI will provide security for the Drum Cache Area and the staging/support area during the Removal Action.

Proper management/handling of non-hazardous wastes, including such wastes not suitable or permitted for backfill, such as:

- Staging, handling, and proper disposal of waste tires encountered in the excavations

- Staging, handling, and proper disposal of abandoned appliances such as refrigerators, air conditioning units, or other items potentially containing refrigerants or similar regulated substances
- Staging, handling, and proper disposal of asbestos or friable asbestos containing material (ACM) if encountered in the excavations
- Staging, handling, and proper disposal of drums containing non-hazardous waste liquids (e.g. oil) (if any) not permitted to be placed back into the excavations
- Staging, handling, and proper disposal of any other non-hazardous wastes or materials not suitable or permitted to be placed back into the excavations

POST-CONSTRUCTION PHASE

- Maintenance of erosion controls. Removal and disposal of the silt fence once the vegetative cover is 80% established.
- Maintenance of vegetated cover (mulch, re-seeding, watering, mowing) after 80% germination and the first mowing. DuPont/BCSI will be responsible for maintenance of the vegetated cover prior to 80% germination and first mowing.

EXHIBIT C

MEMORANDUM OF SETTLEMENT AND ACCESS AGREEMENT

1. Settlement and Access Agreement (“Access Agreement”) executed: _____, 2011

2. Name and address of Grantor: City of Newburgh, Orange County, New York, having an address at City Hall, 83 Broadway, Newburgh, New York 12250

3. a. Name and address of Grantee: E.I. DuPont de Nemours & Company having an address at 1007 Market Street, Wilmington, DE 19898

b. Name and address of Grantee: Bayer CropScience, Inc. (Successor-in-Interest to Stauffer Chemical Company) having an address at 2 TW Alexander Drive, Research Triangle Park, North Carolina 27709

4. Description of Premises: Approximately three-acre so-called “Drum Cache Area” and surrounding buffer area plus access and related rights along the western border of the Newburgh Landfill Superfund Site, which is an approximately 30-acre site bordered on the west by the DuPont-Stauffer Landfill Site, to the south by Pierces Road, to the north by Interstate 84, and to the east by residential, commercial, and light industrial buildings, all as generally shown on Attachment “A,” attached to and comprising [part/all] of Tax Parcel Number _____. Tax Map # ____, Section ____, Block ____, Lot ____ [confirm that the property for this Memo is only the City Property – for the IDA agreement, the property will be IDA property]
(If a Section/Block/Lot number is available, please include)

5. Term of Access Agreement:

(Date/Time-

This instrument is executed for the purpose of giving public record notice of the fact of execution of the above described Access Agreement and all of the terms and conditions of the Access Agreement are incorporated herein by reference.

In witness whereof the parties have hereunto executed this Memorandum of Settlement and Access Agreement this ____ day of _____, 2011.

Grantor:
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

Grantee:
E.I. DUPONT DE NEMOURS & COMPANY

By: _____
Its:

STATE OF)
) 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

Grantee:
BAYER CROPSCIENCE, INC. (SUCCESSOR-IN-INTEREST TO STAUFFER
CHEMICAL COMPANY)

By: _____
Its:

STATE OF)
) 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

ATTACHMENT A

**TERMINATION OF MEMORANDUM OF SETTLEMENT AND
ACCESS AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS, that E.I. DUPONT DE NEMOURS & COMPANY, organized under the laws of the United States of America, having offices at 1007 Market Street, Wilmington, DE 19898, does hereby consent to the following Memorandum of Settlement and Access Agreement being discharged of record and directs that the same be canceled and discharged of record.

Memorandum of Settlement and Access Agreement dated __/__/11 made by City of Newburgh to E.I. DuPont de Nemours & Company and Bayer CropScience, Inc. (Successor-in-Interest to Stauffer Chemical Company), recorded on __/__/11 in Reel ____, Page ____.

Dated the _____ day of _____, 2011.

Grantee:
E.I. DUPONT DE NEMOURS & COMPANY

By: _____
Its:

STATE OF)
) 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

EXHIBIT D

RESOLUTION NO.: 175- 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER OR
THE CHIEF OF POLICE AS MANAGER'S DESIGNEE
TO EXECUTE AN AGREEMENT WITH THE COUNTY OF ORANGE
CONFIRMING CITY OF NEWBURGH PARTICIPATION
IN THE STOP-DWI PROGRAM
FOR THE PERIOD OF JULY 1, 2011 TO SEPTEMBER 6, 2011 PROVIDING
THE CITY WITH AN AMOUNT NOT TO EXCEED \$3,287.00**

WHEREAS, the County of Orange (hereinafter "County") has provided the City of Newburgh (hereinafter "City") with an agreement, to provide for the funding of the STOP-DWI Program within the City of Newburgh for the period of July 1, 2011 and ending September 6, 2011, which includes statewide Fourth of July and Labor Day Holiday period enforcement campaigns; and

WHEREAS, the County shall reimburse the City of Newburgh for increased patrol and court time in connection with enhanced enforcement of laws prohibiting driving while intoxicated; and

WHEREAS, this Council has determined that entering into such agreement 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 Manger or the Chief of Police as Manager's designee be and he is hereby authorized to execute an agreement with the County of Orange confirming the City's participation in the STOP-DWI Program in order to fund the additional cost of stepped-up police patrols and related court appearances for the period of July 1, 2011 through September 6, 2011, not to exceed \$3,287.00.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

STOP DWI PROGRAM SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____ by and between the COUNTY OF ORANGE, a municipal corporation, hereinafter referred to as the "COUNTY," a County of the State of New York with principal offices at 255-275 Main Street, Goshen, New York; and the CITY OF NEWBURGH PD, a Law Enforcement Agency with principal offices at 83 Broadway, Newburgh, New York, hereinafter referred to as "Agency."

ARTICLE 1. SCOPE OF WORK

Agency agrees to perform the services and/or supply goods identified in the applicable Schedule A (the "Services"), which is attached to, and is part of, this Agreement. Agency agrees to perform the Services and/or supply goods in accordance with the terms and conditions of this Agreement. It is specifically agreed to by Agency that the COUNTY will not compensate Agency for any services and/or goods provided not within the scope of the Services as specifically identified in its Schedule A without prior authorization, evidenced only by a written Change order or Addendum to this Agreement executed by the County Executive of the COUNTY after consultation with the COUNTY Department Head responsible for the oversight of this Agreement (hereinafter "Department Head").

ARTICLE 2. TERM OF AGREEMENT

Agency agrees to perform the services and/or supply goods beginning July 1, 2011 and ending September 6, 2011.

ARTICLE 3. COMPENSATION

For satisfactory performance of the Services and/or receipt of conforming goods or as such Services may be modified by mutual written agreement, the COUNTY agrees to compensate Agency in accordance with the fees and expenses as stated in the applicable Schedule B which is attached to, and is part of, this Agreement. Agency shall submit to the COUNTY a monthly itemized invoice for Services rendered during the prior month, or as otherwise set forth in its Schedule B, and prepared in such form and supported by such documents as the COUNTY may reasonably require. The COUNTY will pay the proper amounts due Agency within sixty (60) days after receipt by the COUNTY of a claimant's certification form and invoice, and will notify Agency in writing of the COUNTY'S reasons for objecting to all or any portion of the invoice submitted by Agency. A not-to-exceed cost has been established for the scope of Services and/or supply of goods rendered by Agency. This not -to-exceed cost can be found on the Schedule B applicable to the designated Agency. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the County Executive of the COUNTY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by Agency that the COUNTY will not be responsible for any additional costs, or costs in excess of the above-noted not-to-exceed cost, if the COUNTY'S authorization by the County Executive is not given in writing prior to the performance of the Services giving rise to such excess or additional costs.

ARTICLE 4. EXECUTORY CLAUSE

The COUNTY shall have no liability under this Agreement to Agency or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

Agency represents and warrants that no person or selling agent has been employed or retained by Agency to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Agency further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Agency makes such representations and warranties to induce the COUNTY to enter into this Agreement and the COUNTY relies upon such representations and warranties in the execution hereof. For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this Agreement without liability, entitling the COUNTY to recover all monies paid hereunder and Agency shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

Agency represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest, nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the Services herein provided. Agency further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the COUNTY, nor any person whose salary is payable, in whole or in part, by the COUNTY, or any corporation, partnership or association in which he is, directly or indirectly, interested, shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person (1) if required by the Orange County Ethics Law as amended from time to time, to submit a Disclosure Form to the Orange County Board of Ethics amends such Disclosure Form to include their interest in this Agreement, or (2) if not required to complete and submit such a Disclosure Form, said person must either voluntarily complete

and submit said Disclosure Form disclosing their interest in this Agreement, or seek a formal opinion from the Orange County Ethics Board as to whether or not a conflict of interest exists.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this Agreement without liability, entitling the COUNTY to recover all monies paid hereunder and Agency shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 7. FAIR PRACTICES

Agency and each person signing on behalf of the Agency represents, warrants and certifies, under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by Agency without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal submitted by Agency have not been knowingly disclosed by Agency prior to the proposal opening, directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by Agency to induce any other person, partnership, corporation or entity to submit or not to submit a proposal for the purpose of restricting competition.

The fact that Agency (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of this Article.

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the Services and/or supplying goods and incurring expenses under this Agreement, Agency shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the COUNTY. As an independent contractor, Agency shall be solely responsible for determining the means and methods of performing the Services and/or supplying the goods and shall have complete charge and responsibility for Agency's personnel engaged in the performance of the same.

In accordance with such status as independent contractor, Agency covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees

of the COUNTY, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the COUNTY, including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 9. ASSIGNMENT/SUBCONTRACTING

Agency shall not assign any of its rights, interests or obligations under this Agreement, or subcontract any of the Services to be performed by it under this Agreement, without the prior express written consent of the COUNTY. Any such subcontract, assignment, transfer, conveyance or other disposition without such prior consent shall be void and any services provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the COUNTY shall be subject to all of the terms and conditions of this Agreement.

Failure of Agency to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the COUNTY and, if so terminated, the COUNTY shall thereupon be relieved and discharged from any further liability and obligation to Agency, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the COUNTY except so much thereof as may be necessary to pay Agency's employees for past services.

The provisions of this clause shall not hinder, prevent, or affect an assignment by Agency for the benefit of its creditors made pursuant to the laws of the State of New York.

This Agreement may be assigned by the COUNTY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

ARTICLE 10. BOOKS AND RECORDS

Agency agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 11. RETENTION OF RECORDS

Agency agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. COUNTY, or any State and/or Federal auditors, and any other persons duly authorized by the COUNTY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE COUNTY AND OTHERS

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the COUNTY. Agency shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the COUNTY so that it may evaluate the reasonableness of the charges, and Agency shall make its records available to the COUNTY upon request. All books, vouchers, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the COUNTY, the State of New York, the federal government, and/or other persons duly authorized by the COUNTY. Such audits may include examination and review of the source and application of all funds whether from the COUNTY, any State, the federal government, private sources or otherwise. Agency shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. EXECUTION

This Agreement may be executed in multiple parts. Upon execution of this Agreement by the Orange County Executive, said Agreement shall become valid, binding, effective and enforceable by and between any and all law enforcement agencies that have executed this Agreement prior to its execution by the County Executive.

Any law enforcement agency that fails to timely execute this Agreement will be prohibited from participation in the Stop - DWI Program until they have requested that this Agreement be modified in accordance with Article 23, Modification and, such written modification is executed by both the law enforcement agency requesting the modification and the County Executive.

ARTICLE 14. INDEMNIFICATION

Agency agrees to defend, indemnify and hold harmless the COUNTY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Services performed and/or goods supplied pursuant to this Agreement which the COUNTY, or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of Agency, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the COUNTY arising out of the negligence, fault, act or omission of an employee, representative, subcontractor, assignee or agent of Agency, either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of Agency's negligence, fault, act or omission, then the COUNTY shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action. The rights and remedies of the COUNTY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF COUNTY PROPERTY

Agency assumes the risk of, and shall be responsible for, any loss or damage to COUNTY property, including property and equipment leased by the COUNTY, used in the performance of this Agreement and caused, either directly or indirectly, by the acts, conduct, omissions or lack of good faith of Agency, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by Agency as an expert, consultant, specialist or subcontractor hereunder.

In the event that any such COUNTY property is lost or damaged, except for normal wear and tear, then the COUNTY shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover such loss of damage.

Agency agrees to defend, indemnify and hold the COUNTY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such COUNTY property described in this Article.

The rights and remedies of the COUNTY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

ARTICLE 16. FORCE MAJEURE

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, which is beyond the control of such party, and which by that party's exercise of due diligence and foresight could not reasonably have been avoided.

Upon removal of such cause, the party affected shall resume its performance as soon as reasonably possible. Agency's financial inability to perform shall not be deemed to be an event of Force Majeure regardless of the source causing such financial inability.

If Agency is so delayed in the timely performance of the Services, Agency's sole and exclusive remedy is to request that a Change Order or Addendum to this Agreement be issued by the COUNTY permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based on written notice only, delivered to the Department Head promptly, but in no event later than thirty days after the initial occurrence of the event giving rise to such claim and stating the specific nature of the claim. An extension of time to perform the Services may only be granted by a written Change Order or Addendum to this Agreement signed by the County Executive for the COUNTY. In no event shall the COUNTY be liable to Agency, or its subcontractors, agents, or assignees, or any other person or entity, for damages arising out of or resulting from any such delays.

ARTICLE 17. TERMINATION

The COUNTY may, by written notice to Agency effective upon mailing, terminate this Agreement in whole or in part at any time, (1) for the COUNTY's convenience, (2) upon the failure of Agency to comply with any of the terms or conditions of this Agreement, or (3) upon the Agency becoming insolvent or bankrupt.

Upon termination of this Agreement, the Agency shall comply with any and all COUNTY close-out procedures, including, but not limited to:

A. Accounting for and refunding to the COUNTY within thirty (30) days, any unexpended funds which have been paid to Agency pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the COUNTY of all equipment, appurtenances and property purchased by Agency through or provided under this Agreement, and carrying out any COUNTY directive concerning the disposition thereof.

In the event the COUNTY terminates this Agreement, in whole or in part, as provided in this Article, the COUNTY may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Agency shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the COUNTY, any services procured by the COUNTY to complete the Services herein will be charged to Agency and/or set-off against any sums due Agency.

Notwithstanding any other provisions of this Agreement, Agency shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of Agency's breach of the Agreement or failure to perform in accordance with applicable professional standards, and the COUNTY may withhold payments to Agency for the purpose of set-off until such time as the exact amount of damages due to the COUNTY from Agency is determined. The rights and remedies of the COUNTY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

ARTICLE 18. GENERAL RELEASE

The acceptance by Agency or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction, or administrative means, shall constitute and operate as a general release to the COUNTY from any and all claims of Agency arising out of the performance of this Agreement

ARTICLE 19. SET-OFF RIGHTS

The COUNTY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the COUNTY'S right to withhold for the purposes of set-off any monies otherwise due to Agency (i) under this Agreement, (ii) under any other agreement or contract with the COUNTY, including any agreement or contract for a term

commencing prior to or after the term of this Agreement, or (iii) from the COUNTY by operation of law. The COUNTY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the COUNTY for any reason whatsoever, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 20. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the County Executive of the COUNTY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County, or, if appropriate, in the federal District Court, with venue in the Southern District of New York, White Plains division.

ARTICLE 21. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. Agency shall render all Services under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such Services are rendered.

ARTICLE 22. ENTIRE AGREEMENT

The rights and obligations of the parties, and their respective agents, successors and assignees, shall be subject to and governed by this Agreement, including Schedules A and B, which supersedes any other understandings or writings between or among the parties.

ARTICLE 23. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of Services in this Agreement shall not be binding, and no payments shall be due in connection therewith, unless, prior to the performance of any services, the County Executive of the COUNTY, after consultation with the Department Head, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional Services and the amount of compensation and the extension of the time for performance, if any, for any such Services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with all force and effect to the terms and conditions contained in such Addendum or Change Order.

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

City of Newburgh

By: Michael D. Ferrara / Marjanna
Title: Police Chief
Date: 6-27-11

The County of Orange

By: _____
County Executive
Date: _____

SCHEDULE A

SCOPE OF SERVICES

AGENCY agrees to participate in the 2011 first period Stop-DWI enforcement effort from July 1, 2011 through September 6, 2011 which includes statewide Fourth of July and Labor Day Holiday period enforcement campaigns.

To promote safe and sober roadways during key holiday periods the **COUNTY** and the **AGENCY** recognizes that the enforcement period coincides with state and national holiday period enforcement campaign efforts as described above and the **AGENCY** agrees to participate by providing a portion of DWI enforcement activity efforts during these key enforcement efforts.

The Agency agrees to provide enforcement activity data to the **COUNTY** no later than 10 days after the end of each enforcement period to the County. Failure to provide the data may result in the **AGENCY** receiving the calculated minimum amount of hours/ dollars for the following enforcement period.

SCHEDULE B

City of Newburgh

FEEES AND EXPENSES

Total patrol/court time not to exceed 70 hours.

OR

Total dollar amount for patrol/court activities not to exceed 3287.

RESOLUTION NO.: 176 - 2011

OF

SEPTEMBER 12, 2011

**RESOLUTION AMENDING RESOLUTION NO: 264-2010,
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$150,000.00 FROM CONTINGENCY
TO STREETS AND BRIDGES INFRASTRUCTURE
FOR EMERGENCY REPAIR OF BROADWAY DUE TO HURRICANE IRENE**

BE IT RESOLVED, by the Council of the City of Newburgh, New York, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

<u>Increase</u>		<u>Decrease</u>
Contingency	A.1900.1990	\$150,000.00
Public Works Streets & Bridges Infrastructure	A.5110.0212	
\$150,000.00		

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

**NOTE: Resolution #177-2011 was used at the Emergency Council Mtg.
of September 8, 2011**

RESOLUTION NO.: 178 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN
THE CITY OF NEWBURGH AND CT MALE ASSOCIATES, P.C. FOR
ENGINEERING SERVICES FOR COMMUNITY DEVELOPMENT PROJECTS
RELATED TO THE CITY OF NEWBURGH
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

WHEREAS, the City of Newburgh through a competitive process in which proposals for professional services were solicited, reviewed and evaluated to provide Engineering Services for Community Development projects which include the design of road, bridge, sidewalk, drainage, demolition and associated projects, and assist with bidding and construction management associated with programmed CDBG projects; and

WHEREAS, the City has received a proposal from CT Male Associates, P.C. which has been identified as the most qualified firm to provide said services;

WHEREAS, such professional services are funded under the CDGB Program and the length of the contract is for one (1) year with an option to extend the term of service for up to two (2) additional years for a maximum of three (3) years; and

WHEREAS, the City Council has reviewed the annexed agreement and has determined that it 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 enter into an agreement with C.T. Male Associates, P.C. in substantially the same form as annexed hereto with any other provision that Counsel may require for Engineering Services which will be funded under the CDGB Program.

Craig Marti explained that the term of the agreement is for a period of one year with an option to extend it into the second and third year. The scope and fees are to be negotiated as particular CDBG funds are allocated between the building demolition projects and the sidewalk projects. The objective is to develop standard conditions for the front end and the construction basis of the construction projects. The scope of the construction services can be refined as the budgets are allocated from year to year. The front end portion and the bulk

of CT Male's work can be leveraged into future years at a minimized consulting effort going forward.

Councilman Dillard is concerned that the administrative component is going to take up the bulk of funding. He is most concerned with the number of local people who are going to be hired for the project.

Marti commented that the Section 3 requirement is a component of the actual construction services. The professional services, including the drawing up of the construction documents, the demolition plans and the design of the sidewalks will be done by CT Male Associates with little local involvement. The front end of the project will utilize roughly 6%-8% of total funds. The bulk of the money will be spent on the actual demolition or construction of the buildings. Those projects are going to be constructed in such a way that a portion of the work can be subcontracted to a local firm. He mentioned that Courtney Kain in our Office of Planning and Development is currently working with local firms to become eligible for the Section 3 requirement. She is working with them to see if the contracts can be structured to include site improvements that don't require specialized asbestos and demolition training.

Councilman Dillard questioned how many people can we get employed under the contract.

Richard Herbek responded that it depends on the award of the contract. The jobs are coming from the individual contracts.

Marti stated the answer is really more accurately defined upon completion of the contract and bid documents. Once we ascertain how many buildings are slated for demolition and how many foundations are to be restored, then we can have a better estimate of the amount of work involved.

Councilman Dillard stated he could wait for a clearer explanation when the contract is awarded.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

CONTRACT AGREEMENT

Project No.: 00.0011

Agreement made this 12th day of September, 2011, by and between C.T. MALE ASSOCIATES ENGINEERING, SURVEYING, ARCHITECTURE & LANDSCAPE ARCHITECTURE, P.C., a Professional Corporation registered in New York State and authorized to do business in the State of New York, (hereinafter called C.T. MALE ASSOCIATES); and CITY OF NEWBURGH (hereinafter called the CLIENT).

CLIENT and C.T. MALE ASSOCIATES agree as follows:

A. CLIENT and C. T. MALE ASSOCIATES, for the mutual consideration hereinafter set forth, agree as follows:

A.1 The CLIENT desires to retain C.T. MALE to provide professional services as necessary associated with the CLIENT'S Community Development Block Grant (CDBG).

A.2 The City of Newburgh Common Council passed resolution number _____ dated _____, 2011 authorizing the City Manager to enter into an Agreement with C.T. MALE for Engineering Services with respect to the CDBG, fees to be determined as services are requested.

A.3 Scope of Services – The services to be performed by C.T. MALE generally include the administration of the CDBG program for completing design and bidding documents and providing construction management services for road, sidewalk, bridge, demolition and other capital improvement projects. Specific scopes of services will be developed and negotiated as the need arises.

A.4 C.T. MALE shall perform its services in accordance with generally accepted professional practice for projects of this type.

A.5 Additional Services for Extra Work – C.T. MALE agrees to negotiate the magnitude and extent of any extra work with CLIENT prior to performing the extra work.

B. CLIENT agrees to pay C. T. MALE as compensation for services as follows:

B.1 CLIENT shall pay C.T. MALE for service provided based on documented actual time and expenses expended by C.T. MALE in performance of the project at rates not to exceed those presented on the attached "Schedule of Representative Charge Rates, January-December 2011" unless otherwise approved by the CLIENT. An updated rate schedule will be presented to the City for consideration at the beginning of each calendar year for the duration of this contract.

B.2 All fees and other charges will be billed monthly unless otherwise specified in this agreement or agreed to by both parties. Fees and other charges will be due at the time of billing and paid within 30 days unless otherwise agreed to by both parties.

C. CLIENT shall furnish the following:

Access to project sites, any information regarding environmental conditions of the sites.

D. This Agreement, as signed by the CLIENT and/or his/her representative, includes the following Standard Terms and Conditions incorporated herein by this reference.

E. The person signing this Agreement warrants he/she has authority to sign as, or on behalf of, the CLIENT. If such person does not have such authority, it is agreed that he/she will be personally liable for all breaches of this Agreement, and that in any action against them for breach of such warranty, a reasonable attorney's fee shall be included in any judgment rendered.

F. CLIENT shall provide C.T. MALE personnel with any information regarding potential hazards or whether personal protective measures are required when working on project site(s) associated with this contract and that C.T. MALE personnel be afforded the opportunity to review any health and safety plan available for site(s) that they will be working on.

C.T. MALE ASSOCIATES

AGREED TO:

CITY OF NEWBURGH

83 Broadway
Newburgh, New York 12550
Phone: (845) 569-7446
Fax:

AGREED TO:

**C.T. MALE ASSOCIATES ENGINEERING,
SURVEYING, ARCHITECTURE & LANDSCAPE
ARCHITECTURE, P.C.**

50 Century Hill Drive
Latham, NY 12110
Phone: (518) 786-7400
Fax: (518) 786-7299

By

: _____
(Authorized Signature/Date)

By

: _____
David W. Roecker, PE (Date)

Title

: _____

Title Vice President

: _____

C.T. MALE ASSOCIATES

STANDARD TERMS AND CONDITIONS OF AGREEMENT

1. **EXTRA WORK:** Extra work shall include, but not be limited to, additional office or field work caused by policy or procedural changes or governmental agencies, changes in the project, and work necessitated by any of the causes described in Paragraph 5 hereof. All extra work to be authorized by CLIENT in writing prior to commencement by C.T. MALE.

2. **OWNERSHIP OF DOCUMENTS AND/OR ELECTRONIC MEDIA FILES:** All tracings, specifications, computations, survey notes and media files and other original documents as instruments of service are and shall remain the property of C.T. MALE unless otherwise provided by law. CLIENT shall not use such items on other projects without C.T. MALE's prior written consent. C.T. MALE shall not release CLIENT's data without authorization.

3. **LIMITATIONS OF PROBABLE COST ESTIMATES:** Any estimate of the probable construction cost of the project or any part thereof is not to be construed, nor is it intended, as a guarantee of the total cost.

4. **APPROVAL OF WORK:** The work performed by C.T. MALE shall be deemed approved and accepted by CLIENT as and when invoiced unless CLIENT objects within 30 days of the invoice date by written notice specifically stating the details in which CLIENT believes such work is incomplete or defective.

5. **DELAY:** Any delay, default, or termination in or of the performance of any obligation of C.T. MALE under this Agreement caused directly or indirectly by strikes, accidents, acts of God, shortage or unavailability of labor, materials, power or transportation through normal commercial channels, failure of CLIENT or CLIENT's agents to furnish information or to approve or disapprove C.T. MALE's work promptly, late, slow or faulty performance by CLIENT, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of C.T. MALE's work, or any other acts of the CLIENT or any other Federal, State, or local government agency, or any other cause beyond C.T. MALE's reasonable control, shall not be deemed a breach of this Agreement. The occurrence of any such event shall suspend the obligations of C.T. MALE as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.

6. **TERMINATION:** The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, C.T. MALE shall be paid for all services rendered to the date of termination, as well as for all reimbursable expenses and termination expenses. For purposes of this section, the failure of the CLIENT to pay C.T. MALE within thirty (30) days of receipt of an invoice shall be considered such a substantial failure. In the event of a substantial failure on the part of the CLIENT, C.T. MALE, in addition to the right to terminate set forth in this paragraph, may also elect to suspend work until the default in question has been cured. No delay or omission on the part of C.T. MALE in exercising any right or remedy hereunder shall constitute a waiver of any such right or remedy on any future occasion. Should the CLIENT fail to receive or be approved for grant funds necessary for this contract, said contract shall be terminated at no charge to the CLIENT when available funding is exhausted. In such instance the CLIENT will provide 30 days advance notification to C.T. MALE and pay C.T. MALE for all services rendered to the date of termination.

7. **INDEMNIFICATION:** CLIENT shall indemnify, defend and hold C.T. MALE harmless for any and all loss, cost, expense, claim, damage, or liability of any nature arising from: (a) soil conditions; (b) changes in plans or specifications made by CLIENT or others; (c) use by CLIENT or others of plans, surveys, or drawings unsigned by C.T. MALE or for any purpose other than the specific purpose for which they were designed; (d) job site conditions and performance of work on the project by others; (e) inaccuracy of data or information supplied by CLIENT; and (f) work performed on material or data supplied by others, unless said loss was caused by C.T. MALE's own negligence.

8. **LITIGATION:** Should litigation be necessary to collect any portion of the amounts payable hereunder, then all costs and expenses of litigation and collection, including without limitation, fees, court costs, and attorney's fees (including such costs and fees on appeal), shall be the obligation of the CLIENT.

9. **REPLACEMENT OF SURVEY STAKES:** C.T. MALE, if included in Paragraph A of the Agreement, will provide necessary construction stakes. In instances where it is determined that negligence on the part of the CLIENT or others results in the need for restaking, the cost of such restaking will be billed as an extra to the CLIENT on a time basis. It will be the CLIENT's responsibility to provide adequate protection of the stakes against his own negligence or the negligence of those working for or with him and against vandalism by others. If staking is ordered by the CLIENT or others prematurely and construction does not take place, it will also be the CLIENT's responsibility to protect said stakes until such time as construction takes place.

10. **MAPPING:** Areas obscured by dense vegetation or shadow will be labeled as "DENSE WOODS", "SHADOW", or "OBSCURED AREA". C.T. MALE cannot certify as to the accuracies within these areas. Field verification of such area(s) must be undertaken and is not included within the scope of this Agreement unless explicitly stated.

11. **OBSERVATION AND TESTING OF CONSTRUCTION, SAFETY:** The observation and testing of construction is not included herein unless specifically agreed upon in the Scope of Services as set forth in Paragraph A of this Agreement. It should be understood that the presence of C.T. MALE's field representative will be for the

C.T. MALE ASSOCIATES

purpose of providing observation and field testing. Under no circumstances is it C.T. MALE's intent to directly control or supervise the physical activities of the contractor's workmen to accomplish the work on this project. The presence of C.T. MALE's field representative at the site is to provide the CLIENT with a continuing source of information based upon the field representative's observations of the contractor's work, but does not include any superintending, supervision, or direction of the actual work of the contractor or the contractor's workmen. The contractor should be informed that neither the presence of C.T. MALE's field representative nor observation and testing personnel shall excuse the contractor in any way for defects discovered in his work. It is understood that C.T. MALE will not be responsible for job or site safety on the project.

12. RESTRICTIONS ON USE OF REPORTS: It should be understood that any reports rendered under this Agreement will be prepared in accordance with the agreed Scope of Services and pertain only to the subject project and are prepared for the exclusive use of the CLIENT. Use of the reports and data contained therein for other purposes is at the CLIENT's sole risk and responsibility.

13. RISK ALLOCATION: The CLIENT agrees that C.T. MALE's liability for damages to the CLIENT for any cause whatsoever in connection with this project, and regardless of the form of action, whether in contract or in tort, including negligence, shall be limited to the greater of \$3,000,000.00 or C.T. MALE's total fee for services rendered on the project.

14. CLIENT RESPONSIBILITIES: Client shall be responsible for providing all reasonable assistance required by C.T. MALE in connection with Services, including, without limitation, any assistance specified in the Proposal. In particular, Client will provide the following:

Reasonable ingress to and egress from the Site by C.T. MALE and/or its subcontractors and their respective personnel and equipment.

Clean, secure, and unobstructed space and areas at the Site for C.T. MALE equipment and vehicles or those of C.T. MALE's subcontractors.

Information in the possession of Client (including, without limitation, facility and/or Site schematics, engineering drawings and plot plans) detailing the construction of facilities located underground or above ground at the Site that pertain to the stated scope of work or are necessary to assist C.T. MALE in performing Services and/or to successfully carry out the project.

Prior to any boring, drilling, and/or excavation work being commenced by C.T. MALE, the specific location(s) of such work will be provided to Client. Prior to any boring, drilling, excavation or other intrusive subsurface activities on the Site, Client or Client's representative shall identify any private and public subsurface obstruction or utility that Client or its representative knows or believes to exist at the Site. C.T. MALE, at its discretion, may contact the local public utility locator and, if agreed by Client, a private utility locator to determine the existence and location of subsurface obstruction or utilities. Client or Client's representative will provide C.T. MALE with prior approval of each location where C.T. MALE will carry-out any intrusive activity on the Site. Client agrees that if C.T. MALE or its subcontractor causes damage to a subsurface obstruction or utility that was not properly identified by Client, or marked by the public utility locator or private utility locator, if any, the Client shall indemnify, defend and hold harmless C.T. MALE, its officers, directors, employees and independent contractors from and against any and all claims, costs, fines, or other liability arising out of, or in connection with any damage to any such subsurface obstruction or utilities, except to the extent such claims, costs, fines, or other liability are caused by C.T. MALE's negligence or willful misconduct.

15. CONTROLLING LAWS: This Agreement is to be governed by the laws of the **State of New York**.

16. INSURANCE: C.T. MALE shall procure and maintain throughout the period of this Agreement, at C.T. MALE's own cost, insurance for protection from claims under worker's compensation, temporary disability and other similar insurance required by applicable State and Federal laws. Certificates for all such policies of insurance shall be provided to the CLIENT upon written request. C.T. MALE shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance.

17. SUCCESSORS AND ASSIGNS: Neither CLIENT nor C.T. MALE shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law.

18. MEDIATION: CLIENT and C.T. MALE agree to make every effort to resolve all claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this agreement through mediation. The parties further agree that the CLIENT will require, as a condition for participation in the project and their agreement to perform labor or services, that all contractors, subcontractors, subcontractors and material-persons, whose portion of the work amounts to five thousand dollars (\$5,000) or more, and their insurers and sureties shall agree to this procedure.

19. EQUAL EMPLOYMENT OPPORTUNITY: C.T. MALE is committed to equal employment opportunity for all persons regardless of race, color, sex, age, national origin, marital status, handicap, or veteran's status. In striving to eliminate discrimination in the workplace, it is our policy to deal only with sub-contractors, vendors, suppliers, and

C.T. MALE ASSOCIATES

other affiliates who recognize and support equal employment opportunity and comply with all applicable State and Federal Equal Employment Opportunity laws and regulations including the annual filing of Standard Form EEO-1.

20. NOTICES: All notices called for by this Contract shall be in writing and shall be deemed to have been sufficiently given or served when presented personally and when deposited in the mail, postage prepaid, certified and return receipt requested. If to the CLIENT: Ian MacDougall, City Planner, CITY HALL, Third Floor, 83 Broadway, Newburgh, NY 12550. If to C.T. Male: David W. Roecker, PE, C.T. MALE ASSOCIATES, 50 Century Hill Drive, Latham, NY 12110.

SCHEDULE OF REPRESENTATIVE

CHARGE RATES



January - December 2011

Professional Level Classifications

Rate Per Hour

P7 -	President	\$190.00
P7 -	Vice President(s)	\$190.00
P6 -	<i>Managing:</i> Engineer, Environmental Scientist, Surveyor, Architect, Land Planner, GIS Specialist	\$115.00 to \$165.00
P5 -	<i>Senior:</i> Engineer, Environmental Scientist, Surveyor, Architect, Land Planner, Project Manager, GIS Specialist	\$95.00 to \$135.00
P4 -	<i>Project:</i> Engineer, Environmental Scientist, Surveyor, Architect, Land Planner, Manager, GIS Specialist	\$85.00 to \$120.00
P3 -	<i>Assistant Project:</i> Engineer, Environmental Scientist, Surveyor, Architect, Senior Architect Intern, Land Planner	\$80.00 to \$105.00
P2 -	Design Engineer, Environmental Scientist, Architect, Architect Intern, Intern Land Planner; Project Coordinator	\$70.00 to \$90.00
P1 -	<i>Intern/Junior:</i> Engineer, Environmental Scientist, Surveyor, Architect	\$45.00 to \$60.00

Technical Level Classifications

T6-	Senior Designer, Senior Construction Observer, Senior Engineering Technician, Senior GIS Technician, Senior Crew Chief	\$77.00 to \$94.00
T5 -	Engineering Technician V, Designer, Senior Designer, Construction Observer, Senior Crew Chief, Environmental Technician, GIS Technician, Survey Technician, GPS Manager	\$65.00 to \$90.00
T4 -	Senior Drafter, Construction Observer IV, Field Scientist, Crew Chief, Designer, Technical Assistant IV, Instrument Operator IV, Survey Technician	\$56.00 to \$85.00
T3 -	Drafter, Instrument Person, Survey Technician, CADD Technician	\$53.00 to \$78.00
T2 -	Rodperson, CADD Technician, Drafter II	\$42.00 to \$63.00
T1 -	Junior Drafter, Tracer, Rodperson (apprentice)	\$38.00 to \$48.00

Support Services

S -	Word Processor, Typist, Clerk, Researcher, Project Coordinator	\$47.00 to \$73.00
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REIMBURSABLE EXPENSES



January - December 2011

1. **Travel:**
 - * mileage and tolls (\$.51 per mile)
 - * train
 - * taxi, subway, bus
 - * travel time
 - * car rental, gas
 - * airplane (coach fare)
 - * parking
 - * tips
2. **Meals and Lodging:** At cost.
3. **Photographs:**
 - * film processing (average \$.33 each)
 - * prints
 - * film
 - * special work (e.g. enlargement)
4. **Photocopies:**
 - \$ 0.14 each
 - * sticky-backs \$1.50 each
 - * color copies/photos
 - 8 1/2x11 \$.75 each
 - 11x17 \$1.50 each
5. **Report Printing:** 10 copies or more (\$.07 per page), less than 10 copies (\$.14 per page)
 - * specifications
 - * 3-Ring binders for reports - at cost
 - * bindings
6. **Printing:**
 - * B&W: \$.35/per square foot
 - * Color: \$.38/per square foot
 - * Mylars: \$2.00/per square foot
7. **Scanning:**
 - * \$.14/per 8 1/2 x 11
 - * \$.35/per square foot
8. **CD Burning:**
 - * \$2.00/per CD
9. **Rental or purchased equipment:** Tools (e.g. scaffolding, special lighting, etc. for measuring and photographing existing building).
10. **Telephone charges:**
 - * Long distance charges: At cost
 - * Cellular telephone charges: \$.25 per minute
11. **Fax charges:**
 - * One page \$1.00 (minimum charge)
 - * Two or more pages \$.50 (per page up to \$10.00)
12. **Mail Deliveries:**
 - * Certified mail \$2.80, not including first class postage
 - * Return receipt \$2.30, not including first class postage
 - * Insurance \$1.75/\$50 per piece mailed
 - * Bulk mailings Large reports, etc., Company cost to mail, typically UPS ground
 - * Courier service Company cost to courier/deliver
 - * Overnight service Federal Express, UPS, etc., between \$13.25 and \$35.00/letter
13. **Consultant's Expenses:** With 10% mark-up

NOTE: Resolution #179-2011 is voided. Subject matter was considered already in Resolution # 171-2011.

RESOLUTION NO: 180 - 2011

OF

SEPTEMBER 12, 2011

A RESOLUTION AUTHORIZING THE EXTENSION OF TIME
TO CLOSE TITLE ON 25 HASBROUCK STREET AND
25 HASBROUCK STREET REAR (SECTION 38, BLOCK 4, LOTS 22 AND 70)
SOLD AT THE APRIL 14, 2011 PROPERTY AUCTION

WHEREAS, this Council, by Resolution No.: 80-2011 of April 25, 2011, confirmed the sale of 25 Hasbrouck Street and 25 Hasbrouck Street Rear (Section 38, Block 4, Lots 22 and 70) and authorized the execution of a deed to Jose F. Vera; and

WHEREAS, due to unforeseen circumstances, Jose F. Vera has been unable to close title on the properties and has submitted a request for an extension of time to close title; and

WHEREAS, this Council has determined that granting the requested extension 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 an extension of time to close title on 25 Hasbrouck Street and 25 Hasbrouck Street Rear (Section 38, Block 4, Lots 22 and 70) be and is hereby granted until December 12, 2011, that date being three (3) months from the date of this Resolution; and

BE IT FURTHER RESOLVED, that the deed conveying the premises identified as 25 Hasbrouck Street, Section 38, Block 4, Lot 22 and 25 Hasbrouck Street, Section 38, Block 4, Lot 70, shall contain a provision that said premises shall be combined as one lot of record within one (1) year of the date of conveyance.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO: 181 - 2011

OF

SEPTEMBER 12, 2011

A RESOLUTION AUTHORIZING THE EXTENSION OF TIME
TO CLOSE TITLE ON 34 CARTER STREET (SECTION 22, BLOCK 2, LOT 26)
SOLD AT THE APRIL 14, 2011 PROPERTY AUCTION

WHEREAS, this Council, by Resolution No.: 80-2011 of April 25, 2011, confirmed the sale of 34 Carter Street (Section 22, Block 2, Lot 26) and authorized the execution of a deed to Julius Beckwith; and

WHEREAS, Julius Beckwith submitted a request for an extension of time to close title; and

WHEREAS, the City Manager has granted the sixty (60) day allotted extension to close title on said premises on or before August 16, 2011; and

WHEREAS, due to unforeseen circumstances the purchaser has requested additional time to close title; and

WHEREAS, this Council has determined that granting the requested extension 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 an extension of time to close title on 21 Leroy Place be and is hereby granted until November 16, 2011, that date being three (3) months from the August 16, 2011 deadline previously authorized by the City Manager.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 182-2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE TAX FORECLOSURE
OF 288 GRAND STREET, SECTION 10, BLOCK 2, LOT 26**

WHEREAS, the City of Newburgh has commenced a proceeding for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2008--011978; and

WHEREAS, on May 7, 2011, heirs to the Estate of Lillian Bolden, by their attorney, served an Answer to such action in regard to the foreclosure of 288 Grand Street, Section 10, Block 2, Lot 26; and

WHEREAS, the City of Newburgh has now been advised that the parties are prepared to settle such action;

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to withdraw the liens on the property located at 288 Grand Street, Section 10, Block 2, Lot 26, in the City of Newburgh, from the Lists of Delinquent Taxes provided that the sum of Ninety Seven Thousand Nine Hundred Ninety Nine and 81/100 (\$97,999.81) Dollars representing substantially all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, including but not limited to all open 2010/2011 school taxes, water charges and sewer charges, are all paid in full by certified or bank check on or before September 30, 2011.

Michelle Kelson explained that this was settled in executive session. The property was subject to 2008 tax foreclosure. The owner had imposed an answer and the city moved for summary judgment at that time. The owners then made an offer to repurchase the property in the amount of \$97,999.91. She along with the city council feel it is in the best interest of the City of Newburgh to accept the offer and the parties can go about their business with respect to the sale of the property.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 183 - 2011

OF

SEPTEMBER 12, 2011

**RESOLUTION AMENDING RESOLUTION NO: 264-2010,
THE AMENDED 2011 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$325,000.00 FROM SEWER FUND BALANCE
TO SANITARY SEWERS, TROPICAL STORM LEE
TO PROVIDE FOR EMERGENCY REPAIRS TO COLLAPSED
SEWER MAIN ON ANN STREET**

BE IT RESOLVED, that Resolution No: 264-2010, the 2011 Amended Budget of the City of Newburgh, is hereby amended as follows:

	<u>Increase</u>	<u>Decrease</u>
Sewer Fund:		
Fund Balance		G.0000.0911 \$325,000.00
Sanitary Sewers		
Tropical Storm Lee		G.8120.0213
\$325,000.00		

Councilwoman Bell asked if this is subject to FEMA reimbursement, as well.

Cheryl Gross explained she does not know at this time. But we have applied at the County's directive. We have been asked what the extent of the damage is. And what are the projected costs?

Councilwoman Bell stated and Mayor Valentine and Richard Herbek affirmed that this is not optional, in any case. We have to have the damage repaired.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 184 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO SELECT AND ENTER INTO A CONTRACT WITH
A CONTRACTOR TO PROVIDE EMERGENCY SERVICES
IN CONNECTION WITH A SEWER MAIN COLLAPSE ON ANN STREET**

WHEREAS, a sixteen (16”) inch concrete sewer main collapsed on Ann Street, west of the intersection of S. Johnson Street; and

WHEREAS, camera inspection has revealed severely deteriorated remaining concrete pipe sections with serious pipe deformation; and

WHEREAS, it is necessary to select and enter into a contract with a contractor to provide emergency services to repair and or replace the sewer main; and

WHEREAS, City Charter Section C5.12, entitled “Public emergencies,” provides in sum that ...In case of public emergency such as conflagration, riot, storm,...The City Manager shall also have the power to summon, deputize and otherwise employ such other persons as he may deem necessary for the purpose of rendering protection to the citizens and the City of Newburgh...; and

WHEREAS, this Council has determined that it is necessary and appropriate to repair and or replace the sewer main immediately;

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 select and enter into a contract with a contractor to provide emergency services in connection with a sewer main collapse on Ann Street.

Councilwoman Bell desired to know the process.

Craig Marti remarked that he has been in contact with the Orange County DPW and reviewed its list of emergency service contractors it has hired in response to the hurricane damage. Also he has talked to a couple of contractors himself. One of the heavy highway-type contractors had previously performed work in Newburgh, even though that contract ended in a contentious notice of construction claim and a negotiated settlement claim. City of Newburgh Plumbing Inspector Ed Howard has recommended a contractor that has worked on a large portion of the SUNY campus. Marti

stated he has received timing materials pricing. And it looks like Argenio Brothers is nearly \$1000 a day cheaper with respect to their labor costs. If the numbers hold up he will be in a position to make a recommendation for Argenio Brothers.

Councilwoman Bell asked if Argenio Brothers hires locally.

Marti responded in the affirmative. They hire locally through the local labor unions. In fact, the Robinson Avenue project did have a few local residents. One of its long time employees has been with the company for over 20 years, and he lives within two blocks of Robinson Avenue. So if someone local wants to get a piece of the work, he should get in touch with the union halls and become eligible through that avenue.

Mayor Valentine clarified that Argenio Brothers is a union shop.

Marti stated that he did not seek that specification from the other contractor, as to whether it is unionized or non-unionized; yet the wage rate nature and pricing that was given to him appear as though the company pays prevailing wages or better.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

RESOLUTION NO.: 185 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A CONTRACT WITH WORKFORCE DEVELOPMENT
INSTITUTE AT A COST OF \$29,573.00
TO PROVIDE SERVICES IN CONNECTION WITH
NEWBURGH BUILDS NEWBURGH PROGRAMS TO SERVE
LOW INCOME FAMILIES AND PERSONS WITH IDENTIFIED
BARRIERS TO EMPLOYMENT**

WHEREAS, the Workforce Development Institute (hereinafter “WDI”) provides education and training and workforce development programs supporting working families across New York State; and

WHEREAS, “WDI” has operated Real JOBS NY, a vocational service program, since 2006; and

WHEREAS, “WDI’s” Real JOBS NY program has a proven record of placing and supporting individuals with disabilities, mental illness and other significant barriers in employment; and

WHEREAS, Newburgh Builds Newburgh (hereinafter “NBN”) desires WDI’s performance of the services described on Exhibit A (“Scope of Work”) for NBN in connection with those programs that will serve low income families and persons with identified barriers to employment; and

WHEREAS, WDI has represented to NBN that it is competent, willing and able to perform such services for NBN; and

WHEREAS, such services shall include recruitment and hiring of the Program Coordinator, establishment of specific selection and assessment criteria within the Newburgh population, review caseloads and establish enrollment, engagement and reporting requirements and protocols with community organizations; and

WHEREAS, the term of the contract for such services shall be effective through December of 2011; and

WHEREAS, such services shall be provided at a cost of Twenty Nine Thousand five Hundred Seventy Three and 00/100 (\$29,573.00) Dollars; and

WHEREAS, such funds shall be derived from the unrestricted Section 108 Fund Balance, Account CD.0000.0200.0009; and

WHEREAS, this Council has determined that entering into such an agreement is in the best interests of the City of Newburgh and its residents and citizens alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a contract with Workforce Development Institute to provide services in connection with Newburgh Builds Newburgh Programs to serve low income families and persons with identified barriers to employment.

Councilwoman Bell wanted to address some concerns. She emphasized that we have so many unemployed and untrained workers in our city. The reality is that a lot of the other services that are already in place are not working to get our people working. In order for our city to have a resurgence and a rebirth we have to get people working.

She agrees that Section 3 is a wonderful tool. But as she mentioned to one of her colleagues, she is concerned by the number of people who are going to be hired solely to sweep the construction sites. She stated that we need to get people actually skilled and trained. This is what Workforce Development Institute does. She traveled to Albany with her colleagues to meet with the organization, so they are well acquainted with the work it does. She would be reluctant to invite someone in who was not top notch in the field, because our needs are so great. She read WDI's mission directly from its website. This is an opportunity for us to get our folks ready and set. Many of the Green projects have gone to Ulster County. They have their folks ready there. We need to be on the cutting edge.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

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CONTRACTUAL AGREEMENT

THIS AGREEMENT ("Agreement") made this _____ day of September 2011, by and between WORKFORCE DEVELOPMENT INSTITUTE, located at 24 Fourth Street, Troy, New York 12180 (hereinafter "WDI"), and THE CITY OF NEWBURGH, NEWBURGH BUILDS NEWBURGH STEERING COMMITTEE located at City Hall, 83 Broadway, Newburgh, New York 12550 (hereinafter "NBN").

WITNESSETH

WHEREAS, WDI provides education and training and workforce development programs supporting working families across New York State; and

WHEREAS, WDI has operated Real JOBS NY, a vocational service program, since 2006; and

WHEREAS, WDI's Real JOBS NY program has a proven record of placing and supporting individuals with disabilities, mental illness and other significant barriers in employment; and

WHEREAS, NBN desires WDI's performance of the services described on Exhibit A ("Scope of Work") for NBN in connection with those programs that will serve low income and persons with identified barriers to employment;

WHEREAS, WDI has represented to NBN that it is competent, willing and able to perform such services for NBN.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, it is mutually agreed by and between the respective parties as follows:

1) WDI agrees to perform, as an independent contractor and not as an agent of NBN, all the services as provided in the Scope of Work, appended hereto as Exhibit A and made a part hereof.

2) In full and complete consideration of WDI's performance hereunder, NBN agrees to pay WDI up to, but not exceeding, the sum of thirty thousand dollars (\$30,000.00) for costs incurred based on the attached budget as set forth in Exhibit B. Invoices will be sent to NBN on a monthly basis for services incurred during the previous month. NBN will reimburse to WDI all verified, approved and legitimate costs at 100% reimbursement rate. NBN will issue payment to WDI within thirty (30) days of receipt of invoice and documentation.

3) The Scope of Work in Exhibit A and Budget in Exhibit B may be modified as conditions warrant by mutual agreement between NBN and WDI. NBN and WDI will work to develop additional program services and deliverables for identified participants which may allow

amendment and increase to the original amount of reimbursement money. Each party will agree to the cost of additional services (to include but not limited to assessment, tuition, fees, training materials and employment support services) prior to undertaking any additional work by WDI's staff.

4) Checks will be made out to the Workforce Development Institute, Inc. and mailed to the following address:

Workforce Development Institute, Inc.
96 South Swan Street
Albany, NY 12210

5) NBN agrees that any information concerning activities related to the program contract and WDI operations shall be considered confidential and proprietary to the WDI, and NBN shall hold the same in confidence and shall not use the information other than for the purpose of its business with the WDI. NBN will not disclose, publish, or otherwise reveal any of the information to any other party unless:

- a. the disclosing party's information was rightfully known to or already in the possession of the receiving party prior to disclosure; or
- b. the disclosing party's information becomes part of the public domain without breach of this Agreement by the receiving party; or
- c. the information is independently developed by the receiving party or any of its subsidiaries without reference to or use of the disclosing party's Confidential Information; or
- d. a third party rightfully disclosed such Confidential Information to the receiving party without violating obligations of confidence; or
- e. the disclosing party is required by State or Federal law, court mandate, order, or subpoena to disclose the information, in which such case, the disclosing party shall give prompt written notice of the order to the other, and shall cooperate, upon request, in efforts to quash or modify the order, mandate, or subpoena.

6) The nature of the relationship which the WDI shall have to NBN pursuant to this Agreement shall be that of an independent contractor. No agency, partnership, joint venture or other joint relationship is created by this Agreement. Each party is acting as a principal in its own right and not as an agent or broker for any other party. Under no circumstance shall WDI be considered an employee of NBN.

7) This Agreement represents the entire Agreement and understanding of the parties hereto and no prior writings, conversations or representations of any nature shall be deemed to

vary the provisions hereof. This Agreement may not be amended in any way except by a writing duly executed by both parties hereto.

8) The Agreement shall be effective upon execution through December 31, 2011. The Agreement may be renewed upon mutual consent and availability of funds.

9) This Agreement is deemed to be made under and shall be construed under the laws of the State of New York without reference to its principles of conflicts of laws. All disputes relating to this Agreement shall be litigated in the Supreme Court, State of New York, County of Albany.

10) Termination.

- a. If either party fails to perform any material obligation under this Agreement or violates a material term or condition of this Agreement, and such failure or violation is not cured within ten (10) days following receipt of a notice in writing from the non-breaching party describing the default or failure, then the non-breaching party shall have the right to terminate this Agreement upon written notice to the other.
- b. Notwithstanding anything to the contrary contained in this Agreement, NBN reserves the right to terminate this Agreement, without cause, at any time by delivering at least ten (10) calendar days' prior written notice of termination to WDI. In the case of termination pursuant to this clause, NBN shall pay to WDI for the fees incurred for the work completed by WDI under this Agreement and delivered to NBN as well as reimbursable expenses, if any, incurred by WDI prior to and including the date of termination. NBN shall also pay salary fees for the Program Coordinator for up to 30 days beginning on the date of notice of termination.

11) Information Security. WDI agrees to:

- a. Ensure the security and confidentiality of participant records and information;
- b. Protect against anticipated threats to the security and/or integrity of such participant records and information;
- c. Guard against unauthorized access to or use of participant records or information that could result in substantial harm or inconvenience to any participant; and
- d. Comply with the Gramm-Leach-Bliley Act and the rules promulgated thereunder by the Federal Trade Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

INSERT NAME
City of Newburgh

Ed Murphy, Executive Director
Workforce Development Institute, Inc.

Date: _____

Date: _____

Exhibit A

Scope of Work

1. Work closely with the NBN Steering Committee designated partner organizations and agencies to plan, design and organize the project.
2. Work collaboratively with the NBN Steering Committee and designated partner organizations and agencies to gather information and create a program that will meet the REALJobs NY program needs document the need for the implementation of Phase Two.
3. Recruit and train a Program Coordinator.
4. Work with the NBN Steering Committee to review potential caseloads, establish assessment, enrollment, tracking requirements, and reporting and communication protocols.
5. Work with the NBN Steering Committee to develop a reporting system which meets REALJobs NY needs and tracks program status and outcomes.

EXHIBIT B

RealJOBS NY Newburgh

AUGUST 1, 2011 - DECEMBER 31, 2011

<u>Item</u>	<u>\$</u>
Coordinator Salary (5 months @ \$49k)	\$20,417.00
Coordinator Benefits estimated at 35%	<u>\$7,156.00</u>
Subtotal Salary/Benefits	\$27,573.00
Supplies	\$500.00
Travel	\$500.00
Other (postage, printing, etc.)	\$500.00
Office and Communications	\$500.00
Grand Totals	<u><u>\$29,573.00</u></u>

RESOLUTION NO.: 186 - 2011

OF

SEPTEMBER 12, 2011

**A RESOLUTION APPROVING THE STIPULATION OF SETTLEMENT
AND ORDER IN CONNECTION WITH CERTAIN TAX CERTIORARI
PROCEEDINGS BY CENTRAL HUDSON GAS & ELECTRIC CORP.**

WHEREAS, Central Hudson Gas & Electric Corp. has commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011 tax assessment years bearing Orange County Index Nos. 6027-2006, 6869-2007, 7871-2008, 7512-2009, 7876-2010 and 7370-2011; and

WHEREAS, it appears from the recommendation of the City Assessor, Fernando Gonzalez and Richard B. Golden, Esq. of Burke, Miele & Golden, LLP, Special Counsel for the City of Newburgh in the aforesaid proceedings, upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matters as more fully set forth below is reasonable and in the best interests of the City; and

WHEREAS, Central Hudson Gas & Electric Corp. is willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 46-4-1 be set at an assessed value of \$ 749,305.
- 2- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 19-1-24 be set at an assessed value of \$ 1,176,076.
- 3- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 611.000-9999-107.700/1881 be set at an assessed value of \$ 1,791,527.
- 4- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 46-4-1 be set at an assessed value of \$ 671,675.
- 5- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 19-1-24 be set at an assessed value of \$ 1,058,468.

- 6- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 611.000-9999-107.700/1881 be set at an assessed value of \$ 1,791,527.
- 7- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 46-4-1 be set at an assessed value of \$ 604,507.
- 8- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 19-1-24 be set at an assessed value of \$ 952,621.
- 9- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 611.000-9999-107.700/1881 be set at an assessed value of \$ 1,791,527.
- 10- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 46-4-1 be set at an assessed value of \$ 544,056.
- 11- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 19-1-24 be set at an assessed value of \$ 857,359.
- 12- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 611.000-9999-107.700/1881 be set at an assessed value of \$ 1,791,527.
- 13- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2015-2016 as tax map number 46-4-1 be set at an assessed value of \$ 544,056.
- 14- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2015-2016 as tax map number 19-1-24 be set at an assessed value of \$ 857,359.
- 15- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2015-2016 as tax map number 611.000-9999-107.700/1881 be set at an assessed value of \$ 1,791,527.
- 16- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2016-2017 as tax map number 46-4-1 be set at an assessed value of \$ 544,056.
- 17- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2016-2017 as tax map number 19-1-24 be set at an assessed value of \$ 857,359.
- 18- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2016-2017 as tax map number 611.000-9999-107.700/1881 be set at an assessed value of \$ 1,791,527.
- 19- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2017-2018 as tax map number 46-4-1 be set at an assessed value of \$ 544,056.

- 20- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2017-2018 as tax map number 19-1-24 be set at an assessed value of \$ 857,359.
- 21- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2017-2018 as tax map number 611.000-9999-107.700/1881 be set at an assessed value of \$ 1,791,527.

NOW, THEREFORE BE IT RESOLVED, that the proposed settlement as set forth and described above and the attached Stipulation of Settlement and Order is hereby approved pursuant to the provisions of the General City Law and other related laws, and

BE IT FURTHER RESOLVED, that the City Manager of the City of Newburgh; the Assessor of the City of Newburgh; and Burke, Miele & Golden, LLP, as Special Counsel, be and they hereby are designated as the persons for the City who shall execute the Stipulation of Settlement and Order, and take whatever other steps necessary to effectuate the settlement.

Michelle Kelson pointed out that Central Hudson owns five parcels. The company believes it is entitled to a reduction on those assessments, which would require us to refund the company at least \$250,000. The resolution authorizes the settlement of an agreement which would avoid the need for a cash payout in exchange for a 10% reduction on CH's total assessment. The terms of settlement would preclude the company's ability to challenge the assessments for the next seven years.

She stated that in addition to saving us money, the settlement is much better for the City of Newburgh than litigation and potential future refunds that could cost in excess of the original refund amount.

Councilwoman Angelo moved and Councilwoman Bello seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine-5

ADOPTED

STATE OF NEW YORK
SUPREME COURT COUNTY OF ORANGE
In the Matter of the Application for a Review Under Article 7
of the Real Property Tax Law of a Tax Assessment by

CENTRAL HUDSON GAS & ELECTRIC CORP.,

Settlement

Petitioner,

Stipulation of

and Order

- against-
6027

Index No. 2006-

2007-

6869

ASSESSOR FOR THE CITY OF NEWBURGH, THE

2008-

7871

CITY OF NEWBURGH, THE BOARD OF ASSESSMENT

2009-

7512

REVIEW FOR THE CITY OF NEWBURGH, COUNTY OF

2010-

7876

ORANGE, AND NEWBURGH ENLARGED CITY SCHOOL

2011-

7370

DISTRICT,

Respondents.

WHEREAS, Petitioner Central Hudson Gas & Electric Corp. ("Petitioner"), by and through its attorneys, Bond, Schoeneck & King, PLLC, Stuart F. Klein, Esq., of counsel, has duly and timely commenced the above-captioned proceedings ("Proceedings") for 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 to review the assessments on properties it owns within the City of Newburgh, Orange County, New York; and

WHEREAS, Respondents Assessor of the City of Newburgh ("Assessor"), the Board of Assessment Review of the City of Newburgh ("BAR"), and the City of Newburgh (collectively, the "City"), has appeared in these Proceedings by and

through their attorneys, Burke, Miele & Golden, LLP, Kelly Naughton, Esq., of counsel; and

WHEREAS, the Newburgh Enlarged City School District (“School”) has not intervened in these Proceedings; and

WHEREAS, the County of Orange (“County”) has also not intervened in these Proceedings; and

WHEREAS, Petitioner and the City are collectively referred to as the “Parties,” and

WHEREAS, the Parties have engaged in settlement discussions and have agreed to fully resolve their differences without further litigation upon the terms of this Stipulation of Settlement and Order (“Stipulation”); and

WHEREAS, the Parties have authorized their attorneys to enter into the Stipulation; and

WHEREAS, it appears that entering into this Stipulation is in the Parties’ best interests; and

WHEREAS, upon reading and filing of this Stipulation, it is hereby

STIPULATED AND AGREED by and among the Parties hereto as follows:

1. The real properties at issue in these Proceeding are situated in the City and described on the City’s assessment roll for the tax years as follows (collectively referred to as the “Properties”):

<u>2006-2007 Tax Year</u>	
Property Description	Tax Map No.
Newburgh Gas Regulator Station	46-4-1
Electric Distribution	999-1-124

Montgomery Street Station Equipment	999-1-132
Gas Distribution	999-1-133
Montgomery Street Substation	19-1-24

2007-2008 Tax Year

Property Description	Tax Map No.
Newburgh Gas Regulator Station	46-4-1
Electric Distribution	999-1-124
Montgomery Street Station Equipment	999-1-132
Gas Distribution	999-1-133
Montgomery Street Substation	19-1-24

2008-2009 Tax Year

Property Description	Tax Map No.
Newburgh Gas Regulator Station	46-4-1
Montgomery Street Substation	19-1-24
Electric Distribution	611.000-9999-107.700/1881

2009-2010 Tax Year

Property Description	Tax Map No.
Newburgh Gas Regulator Station	46-4-1
Montgomery Street Substation	19-1-24
Electric Distribution	611.000-9999-107.700/1881

2010-2011 Tax Year

Property Description	Tax Map No.
Newburgh Gas Regulator Station	46-4-1
Montgomery Street Substation	19-1-24
Electric Distribution	611.000-9999-107.700/1881

2011-2012 Tax Year

Property Description	Tax Map No.
Newburgh Gas Regulator Station	46-4-1
Montgomery Street Substation	19-1-24
Electric Distribution	611.000-9999-107.700/1881

2. The aforementioned Properties have been assessed and valued by Respondent Assessor for the subject assessment roll years and tax years as follows:

2006-2007 Tax Year

Tax Map. No.	Equalization Rate	Total Assessment
46-4-1	24%	\$682,232
999-1-124	24%	\$534,482
999-1-132	24%	\$523,078
999-1-133	24%	\$224,224
19-1-24	24%	\$116,434

2007-2008 Tax Year

Tax Map. No.	Equalization Rate	Total Assessment
46-4-1	20%	\$682,232
999-1-124	20%	\$534,482
999-1-132	20%	\$523,078
999-1-133	20%	\$224,224
19-1-24	20%	\$116,434

2008-2009 Tax Year

Tax Map. No.	Equalization Rate	Total Assessment
46-4-1	100%	\$1,561,276
19-1-24	100%	\$1,394,823
611.000-9999-107.700/1881	100%	\$2,535,991

2009-2010 Tax Year

Tax Map. No.	Equalization Rate	Total Assessment
46-4-1	100%	\$1,099,346
19-1-24	100%	\$1,110,102
611.000-9999-107.700/1881	100%	\$1,920,040

2010-2011 Tax Year

Tax Map. No.	Equalization Rate	Total Assessment
46-4-1	100%	\$829,228
19-1-24	100%	\$1,306,751

611.000-9999-107.700/1881	100%	\$3,030,208
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2011-2012 Tax Year

Tax Map. No.	Equalization Rate	Total Assessment
46-4-1	100%	\$773,624
19-1-24	100%	\$1,258,436
611.000-9999-107.700/1881	100%	\$1,791,527

3. In order to resolve these Proceedings, Petitioner is willing to discontinue such Proceedings, with prejudice and without costs to either side, in exchange for which the subject Properties' total assessed values for the 2011-2012 year will be set at the agreed-to reduced assessed value, set forth below:

2011-2012 Tax Year

Tax Map. No.	Agreed to Assessed Value
46-4-1	\$749,305
19-1-24	\$1,176,076
611.000-9999-107.700/1881	\$1,791,527

4. Furthermore, in order to resolve these Proceedings, Petitioner is willing to discontinue such Proceedings, with prejudice and without costs to either side, in exchange for which the Parties agree that the total assessed values for the subject Properties for tax years 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018 will be the following:

2012-2013 Tax and Assessment Roll Year

Tax Map. No.	Agreed to Assessed Value
46-4-1	\$671,675
19-1-24	\$1,058,468
611.000-9999-107.700/1881	\$1,791,527

2013-2014 Tax and Assessment Roll Year

Tax Map. No.	Agreed to Assessed Value
46-4-1	\$604,507
19-1-24	\$952,621
611.000-9999-107.700/1881	\$1,791,527

2014-2015 Tax and Assessment Roll Year

Tax Map. No.	Agreed to Assessed Value
46-4-1	\$544,056
19-1-24	\$857,359
611.000-9999-107.700/1881	\$1,791,527

2015-2016 Tax and Assessment Roll Year

Tax Map. No.	Agreed to Assessed Value
46-4-1	\$544,056
19-1-24	\$857,359
611.000-9999-107.700/1881	\$1,791,527

2016-2017 Tax and Assessment Roll Year

Tax Map. No.	Agreed to Assessed Value
46-4-1	\$544,056
19-1-24	\$857,359
611.000-9999-107.700/1881	\$1,791,527

2017-2018 Tax and Assessment Roll Year

Tax Map. No.	Agreed to Assessed Value
46-4-1	\$544,056
19-1-24	\$857,359

611.000-9999- 107.700/1881	\$1,791,527
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5. The “Agreed-to Assessed Values” for the Properties as set forth above in paragraph 4 for tax years 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018 are based upon the assumption that the Equalization Rate for the City remains at 100%. Should the Equalization Rate for the City drop below 100% for any of the aforementioned future tax and assessment roll years, the City agrees that the values set forth above will constitute the Properties’ Full Equalized Values. Accordingly, if the “Agreed-to Assessed Value” is \$100,000 and the Equalization Rate is reduced from 100% to 50%, the Assessed Value would, based upon the agreement set forth herein, be reduced to \$50,000.

6. The officer or officers having the custody of the final assessment and tax rolls upon which the above-referenced taxes are levied, should set and/or correct or revise the entries for each of the above-referenced final assessments in conformity with this Stipulation, and shall note upon the margins of the rolls, opposite these entries, that they have been corrected by authorization of this Stipulation as may be deemed necessary and proper.

7. The Proceedings shall be discontinued with prejudice upon the City’s compliance with this Stipulation’s terms. In the event the City fails to set the Properties’ assessed values as provided for in this Stipulation, the Proceedings shall be restored.

8. With respect to the time period set forth in RPTL § 727(1), the three-year time period shall not apply, in its place, the City of Newburgh agrees that the assessments for the Properties shall be in accordance with the terms set forth in paragraph 3.

9. The parties further agree that the provisions of RPTL §§ 727(2)(a), 727(2)(b), 727(2)(d), 727(2)(g) and 727(2)(i) do not apply to this Stipulation, and the provisions of RPTL §§ 727(2)(e), 727(2)(f) and 727(2)(h) apply to this Stipulation.

10. Regarding the provisions of RPTL § 727(c), should there be any physical changes to the Properties, such as an improvement, the Parties agree that the Assessed Value for the Properties shall be no greater than the assessed values set forth in paragraph 3, plus the market value of those improvements, as may be affected by the City's equalization rate in any year. Similarly, the Parties agree that Petitioner reserves its rights to challenge any newly set assessed values following any improvements made to the subject Properties.

11. Furthermore, since the provisions of RPTL § 727 do not contemplate a situation where parcels, such as the subject Properties, are merged with another parcel, the Parties agree that should a merger occur, the value of the merged parcel shall be derived by calculating the assessed values set forth in paragraph 3 with the assessed values of the parcel into which said Properties is being merged into. The Parties agree that Petitioner reserves its rights to challenge any newly set assessed values that may result following a merger of parcels.

12. An executed copy of the Stipulation, with Notice of Entry, shall be entered and docketed in the Orange County Clerk's Office, and shall be filed among the Assessor's permanent records.

13. This Stipulation shall be deemed as benefiting the City and any other taxing authorities which use the City's assessment rolls for tax levying or other purposes, or who would otherwise be bound by any final judgment in any pending tax certiorari proceeding between the Parties.

14. The Parties hereto represent that the individuals executing this Stipulation have been fully authorized by their respective clients to enter into this Stipulation with full and binding effect upon the Parties.

15. This Stipulation is the full, final, and complete Stipulation and supersedes any prior oral or written agreement between the parties. Specifically, the Parties are entering into this Stipulation of Settlement and Order to save litigation expenses that would be sustained if the issues herein could not be resolved amicably.

16. This Stipulation may not be modified except by a subsequent writing signed by the authorized representative of all parties herein, and ordered by this Court.

17. If any provision of this Stipulation shall be determined to be invalid, illegal, null or void, or unenforceable to any extent, the remainder of this Stipulation and its application shall not be affected and shall be enforceable to the fullest extent permitted by law.

18. The Parties agree that this Stipulation of Settlement and Order:

a) shall not affect the assessment levied upon any other parcel or parcels of real property in the City of Newburgh,

b) is entered into to resolve these Proceedings (Index Nos.: 2006-6027, 2007-6869, 2008-7871, 2009-7512, 2010-7876, and 2011-7370) and in no event shall it be offered or admitted in any other proceeding by the parties or by any third parties as competent evidence of any fact,

c) may be filed and docketed in the office of the Orange County Clerk as provided in the New York Civil Practice Law and Rules,

d) is with prejudice, provided that the City fulfills all of its obligations herein with respect to the property assessments.

DATED: _____, 2011

DATED: _____2011

Stuart F. Klein, Esq.
Bond, Schoeneck & King, PLLC
Attorneys for Petitioner
111 Washington Avenue
Albany, NY 12210-2211
Telephone: (518) 533-3000

Kelly Naughton, Esq.
Attorney for Respondent City of Newburgh
Burke, Miele & Golden, LLP
40 Matthews Street, Suite 209
P.O. Box 216
Goshen, New York 10924
Telephone: (845) 294-4080

DATED: _____2011

Richard F. Herbek
City Manager, City of Newburgh
83 Broadway
Newburgh, New York 12550

DATED: _____2011

Fernando Gonzalez
Assessor, City of Newburgh
83 Broadway
Newburgh, New York 12550

SO ORDERED AND ENTERED:

dated this ____ day of _____ 2011, by

Hon. Catherine M. Bartlett
Acting Justice of the
Supreme Court

NEW BUSINESS

There was no new business to discuss at this time.

OLD BUSINESS

There was no old business to discuss at this time.

PUBLIC COMMENTS REGARDING GENERAL MATTERS OF CITY BUSINESS

Alden Link, Broadway, mentioned that the City Business District is divided into three distinct areas, one of these being the Historical District. This section of the city is filled with decrepit buildings, facades that are crumbling, and vacancies. This district is not doing the city much good. He met with members of the ARC about five years ago, in which he was shown a photo of a new renovation at 116 Broadway. According to the ARC this is the way the buildings should look like in the historical district. The property is an awful mess if you go there now. Building materials have rotted. Using 116 Broadway as a testament, he feels that the historical district should be eliminated. The ARC is an absolute terror. Many people don't even want to undertake projects in this city because of the fight they have to fight with the ARC. This is Newburgh. People in this city don't have the money to keep painting the siding every few years.

Roxie Royal, Farrington Street, remarked that you do not see a lot of the city residents filling jobs that are created by various city projects. Companies from surrounding areas come into Newburgh and bring their own workers, so they do not have a lot of vacancies for Newburgh residents. She has nothing against Argenio Brothers. In fact, it is a good company with a long-standing reputation in the city. But they have their own workers and they are mostly unionized. The union doesn't allow Argenio to fill the spots with nonunionized employees. So we have to create something or get contractors that *need* people to work with them on their jobs. She asked what is wrong with the internship program. One of her first jobs was in a factory. She did not know how to operate a sewing machine when she started. But she was given a chance.

Maryann Prokosch stated there are a lot of issues with Burton Towers. She realizes the building is at a point where it could be condemned. But she does not understand how we did not meet with the Newburgh Housing Authority first about a Right of Refusal. In this way, she would not want to anger another party who had a much rights as she did. She would want to sit down together and see if we could come to a mutual agreement that is in the best interest of the residents of that building. Now we are at the point of litigation once again because we did not take the first step that we should have taken.

Richard Herbek interjected that that information is not true. There are aspects of this that she is just not aware of. He stated that we did sit down with NHA. At that time, we would have lost over \$500,000, so we said 'No'.

Michelle Kelson reaffirmed that the City of Newburgh, in fact, had many conversations with NHA.

Mayor Valentine interjected that this is not one of those times in which you can just form an opinion in three minutes and comment about what should have been done. The meeting took hours that one would not even imagine. The meetings occupied much of his time and much of colleagues and staff time. You can't even count the hours spent on it.

Prokosch stated that for future reference information like this should be made public.

Councilman Dillard pointed out this is presently in litigation. He suggested to Maryann that when litigation is settled, she should come back before the council and request that the full story be presented.

Regina Brown, South Lander Street, became a new homeowner in 2007. She thought she made a wise investment when she purchased a home in the city where she grew up. She feels she made a big mistake. She wakes up every morning and all she sees is trash. The weeds and garbage come all the way out to the road. She has taken pictures of the garbage strewn throughout the city. People are creating their own landfills here, because we do not have any bulk item conditions in our garbage pickup. She takes pride in her home. But it is frustrating when the city does not even take care of its own properties (SEE COMMENTS ATTACHED AND PHOTOS SUBMITTED)

Barbara Smith remarked that if you do not keep the public informed, then we tend to make up things as we go along. So do not blame Maryann for the comments she made. Second, the city should allocate one day to pick up items damaged and left behind by Hurricane Irene. She stated that if items are not in the basement or the front or backyard, then it is on the streets all around the city. She urged the council to give us a community dumpster to help residents get rid of the debris that has been left behind from the storm.

Tracy McKnight spoke in support of her friend. She sweeps her sidewalk and tries to keep up her home. The problem is this city does not back her up. The price of her home is decreasing because we allow the kids to go around doing whatever they want to do. She received a parking ticket at 2:30 AM for parking in her own driveway. She applauds the police department, in general, but we do not seem to work on anything else in this city, such as curfews. What about all of the other stuff that occurs against the law? What is one to do when his neighbor does not do what he is supposed to do?

Jannifer Murchison, City Resident, praised George Garrison and DPW staff for their continued efforts. She belongs to a women's support group and they had gone around the city helping people clean up their yards. Garrison and staff helped them tremendously, even though his hands were tied by the Powers That Be. She asked the council what the organization Workforce Development Institute is going to do to help low income persons.

Councilwoman Bell replied that WDI is going to identify what the best area of training is for residents. It will not be stuff that never gets used. She is concerned because she sees a lot of unemployed and untrained persons.

Ms. Murchison remarked that she qualifies as a low income resident. She is constantly being shuffled from program to program. Now the city is paying an organization \$29,000 to do what programs in existence already are supposed to be doing. Murchison feels that we are throwing away good money. It is the same thing that occurs over and over again. She perceives it as a bunch of rhetoric.

Councilwoman Bell encouraged Ms. Murchison to have confidence in the initiative. We have to wait and see. If we have ten people who are providing training to 85% of the untrained population, then there is definitely a problem. There is not a coordination of services. What WDI is going to do is bring it all together under one umbrella to identify the needs of this city.

Sheila Monk remarked she has been a lifetime resident of Newburgh. She moved away two years ago and recently returned. She thanked the council for what it is doing with Burton Towers. Her grandmother lives there and the conditions are horrendous. She has been calling and fighting about the broken elevator and intercom machine.

Second, she worked for NYS for 23 years. She returned to school and received a Masters in Psychology. When she went back to the workforce she could not find a job. She ended up creating her own program to help incarcerated women find empowerment. Many residents really want to see a change. There is a lot of grant money available for these types of programs. She encouraged us to work together and let's be a part of the solution.

A man commented that after Irene the City of Poughkeepsie set out some neighborhood dumpsters. He recalled New York City's Broken Glass Policy twenty-something years ago. Perhaps the City of Newburgh could entertain a Soda Can or Candy Wrapper policy with all of the trash strewn around.

Acquanetta Wright, North Miller Street, is saddened that she is one of the naysayers. But she stated she has devoted 13 solid years of her life to this municipality. In 13 years she has missed only three council meetings. She is giving up the fight, and she says to whoever is in control, "Good Controlling!"

Second, she went to City Hall to pay some delinquent taxes for a friend. She was thwarted because she discovered that the current had to be paid before she could pay off the back taxes. This is a strange policy, because in essence she left with all of her money and the City had none.

Last, she mentioned that she had a great season at the waterfront jazz series. There were 26 shows in all. Over 15,000 people visited from as far away as Albany and Long Island. In fact, one woman from Albany attended every Tuesday and Wednesday since the commencement of the series. Newburgh Drum Corp opened the shows. It was so beautiful to see the children. She cried the whole time. The economic development was incredible too. She hired a Master Carpenter and a sound engineer. She hired two homeless men for cleanup. And she paid over 100 musicians.

She thanked the police auxiliary, Courtney Kain, George Garrison, Councilwoman Bell and Councilwoman Bello, Mayor Valentine, former Councilwoman Dickinson and former Corporation Counsel Geoffrey Chanin, who offered tremendous support. She tearfully stated that as we all know, the Newburgh Jazz Series will not be returning to the City of Newburgh.

Denise Ribble suggested that we hold an informational session to clarify a lot of the misconceptions about the HUD Section 3 policy, the Newburgh Builds Newburgh program and the Workforce Development Institute initiative. We have been talking about this for over two years. We are anticipating some HUD Section 3- related, and CDBG-funded contracts, which will fit into hiring local people who meet those requirements. Yet we need to create linkages with prospective employers. It does not help the situation any when someone takes training for 6 months, and then afterward is told there is no work available.

Second, she feels it would be beneficial if Ian MacDougall could do a quick synopsis of the Consolidated Iron site. There seems to be a misconception that we can only sell it for what we put into it. As Ian had previously stated, this is not exactly accurate. We *can* do some administrative costs. It does not mean that we can not sell it for more money than initially invested. We just have to take that into consideration.

Third, she is fascinated that nobody questioned the scope and cost of services regarding Resolution #173-2011. This is the one that is going to cost a lot of money. She asked how much money is left in the Contingency Fund.

She announced that the Art Barge is going to be docked at the waterfront the weekend of September 23-25, 2011; Studio Tours on Oct. 15-16, 2011; and Oct. 1st all boards will be doing training. This is going to be hosted by the Landbank. Perhaps some of the questions about the ARC and how the various boards interrelate can be answered at that time. She encouraged people to vote tomorrow on Primary Day.

Former Councilmember Maryann Dickinson encouraged all constituents to get out and vote. She wished the candidates good luck, as well. She was saddened to see that one of Newburgh candidate's signs is defaced. She thought how disrespectful it is for someone to do something like that. Things like this make her feel embarrassed for our city.

Omari Shakur, First Street, stated that whenever he has a problem with the garbage he just calls upon George Garrison and someone is sent right over to take care of it. Shakur does not know what is going on in the city, but there are quite a number of landfills springing up. The stench is horrendous at the corner of West Parmenter Street and William Street.

Second, he wanted to know what type of services Workforce Development Institute is providing for \$29,000. He would like to see provisions of services written down on paper. And how are we always finding money for organizations to help people find jobs, but yet the residents can never fill the positions. He believes that part of the problem is that 80% of the people who work in the city do not even reside here.

Charles Kimbrough, City Resident, pointed out that part of the problem is that we do not really think outside of the box. The city does not derive substantial revenue from the waterfront as it is. It is time that Newburgh starts utilizing its waterfront to its full advantage. Here we have a lady that brought over 15,000 people from near and far to our waterfront. Perhaps we could use that \$29,000 for a study of full waterfront utilization. That is an excellent place to put an open-air venue that attracts lots of people during the summertime.

Also we have a wealth of talent right here in our city. He said, "Before we start looking to sell the farm, maybe we should start milking our own cows." Perhaps we could use that \$29,000 for a study on how we are able to make the barriers safe at the waterfront so that people don't fall into the Hudson. There are tremendous opportunities right here. We need to begin looking at home before we start outsourcing everything.

Judy Kennedy, Grand Street, stated that the dirt in our city is a key thing that has really motivated her to take some of the positions has taken. She has walked throughout the city and witnessed all the trash. Some of the smells are sickening. There are other ways to deal with this without solely relying on the help of DPW. Harlem and other cities have done it through programs, such as Adopt-a-Block. If we want to attract any kind of business base here, we have to clean it up.

Second, she is very saddened that Acquanetta is not going to continue with the jazz series next year. She has some ideas for other venues that could be used. It breaks her heart after all of Acquanetta's hard work and efforts. Next, she agrees with the comments made about the defacement of the signs. It is just another symptom of the disrespect people have for others' property.

She would like us to make sure that the majority of the CDBG funding discussed in Resolution #178-2011 goes to actual demolition and jobs, and not just overhead.

Craig Marti explained that CT Male Associates' professional services will be negotiated as we identify specific properties. The demolition techniques will likely be relevant to those particular properties. Typically, professional services range anywhere between 6%-8% of the total project. The ratio could shift in relation to the kind of demolition involved. He stated the company has worked very successfully on similar projects throughout the state. The company is knowledgeable when it comes to the CDBG program and the limited resources that go into these types of projects.

Janet Gianopolous commented she was glad to see the 9/11 observances on the city website. Having lost a number of friends in the tragedy, she decided to attend the armory presentation. The website stated it began at 4:00 PM. However when she arrived she regretted to see that it had actually started an hour earlier.

Mayor Valentine pointed out it was not the city's fault. It was due to a last minute change in scheduling by Senator Larkin's office.

Gianopolous remarked that in a few minutes we are going to be hearing about the budget, which has to do with asking the taxpayers to come up with more money. We need to appreciate the services that we have already. There are a number of youth services, such as Girl Scouts and Boy Scouts. She mentioned a beneficial program that Albany is using, called *Urban Scholars*. The program is not just for entertainment. It puts children in colleges with college professors during the summer months.

Additionally she realizes that the police department is kept busy on ten streets in the city. This probably coincides with the building violations density map. Year after year, this appears to be a big problem. It needs to be looked at in order to stop it.

Michael Gabor mentioned there was a [movie] shooting in the city. It was not a small production either. He did not hear about it from the press or from the City of Newburgh. He heard about it through the grapevine. He discovered that the film crew was here for a couple of weeks. He called City Hall and spoke to someone in the executive office. If Newburgh is such a dangerous place, then why are we shooting a movie here? He stated he was told that the crew did not want to bring attention to the filming.

Mayor Valentine interjected that this information is simply not true. Press releases go out for filming purposes. Most times, the production company asks to meet with the mayor and city manager and explains to them what they are setting out to do. Sometimes the company wants the publicity, and other times companies do not want the publicity and exposure. This particular company was a quieter group. The City of Newburgh promotes it whenever we get the announcement. From that point on, it is up to the media as to whether it wants to write a story about it or not. He feels it is important to announce things like this.

Gabor pointed out that since there is no fee schedule for movies, the city only received \$50 for the event fee for a movie that had a very large budget. He knows someone who was paid \$2400 for allowing the film crew to use its building. The other side of this is that Newburgh did not even receive any good publicity from it. City streets were closed due to filming. We need to take this opportunity to get the word out. We seem to get a lot of free *bad* publicity.

Timothy Hayes commented that the little joke about the shooting was not funny. Just ask the mother of a 16-year old son whether it was funny or not. We take things like that very seriously in the community. He pointed out that the Federal unemployment rate is 9.1%, the unemployment rate in Orange County is 8% and the unemployment rate in Newburgh is 30%. When we talk about contracts and the contractors, he feels that the council has to work better for the people. It is election time. He hopes the people are listening.

Regina Tisdale, Newburgh, remarked that she volunteered at the Newburgh Jazz Series for the last four years. It has been a marvelous event. It has brought a lot of people to our city. It has garnered business for the restaurants and other establishments. She is appalled that something positive that has come into the city is being shot down. She agrees with the general

feeling that if it is anything negative, then it is brought forth and highlighted in the media. Here you had something enjoyed by all. She is disgusted and the City of Newburgh should be ashamed of itself.

There being no further comment, this portion of the meeting was closed.

FURTHER COMMENTS FROM THE COUNCIL

Councilwoman Angelo stated when Workforce Development Institute comes in she hopes the organization will contact all the union halls. She continues to mention at council meetings that the unions are looking for persons interested in apprenticeship program. She asked if there is someone out there who would be willing to carpool high school teens to the union halls for training. She pointed out that Timmy [Hayes] took the course for three months and now he is on a list. She encourages others to go and apply. The programs teach bricklaying, carpentry, plumbing and electricity.

Second she remarked that the city made a substantial amount of money at the Labor Day weekend festival. There were many donors. Everything has been itemized. The only odds that were against them were the heat and the humidity. We lost out on Labor Day Monday due to the rain. Otherwise the city would have made even more money.

Next, she wished all of the candidates luck tomorrow on Primary Day.

Councilwoman Bell stated that she is unable to wish all of the candidates luck tomorrow, because it is impossible for everybody to win. So she wished the candidates that she is supporting much luck tomorrow. Second, she pointed out that she works on Monument Street. So she would like to make it clear that she does get out into the Newburgh community. Next, she is extremely apprehensive and concerned about the Manager's budget. She thanked everyone for coming out this evening.

Councilwoman Bello stated she appreciates the comments about the garbage. The garbage is something she notices around the city all the time. She still does not understand why the city eliminated the once-a-month bulk pickup. She sees mattresses, tires and old furniture dumped all around the city. It does nothing to attract people to Newburgh. With the cost of sanitation pickup so high, she does not understand why bulk it can not be reinstated. She has private sanitation pickup for her storefront property, which also contains two apartments. She pays \$25 each month, and she is able to put out everything except the kitchen sink. But here if you want to put out a large trash item, the cost is between \$10 and \$20 per item. The residents can not afford to pay these fees.

Next, she implored Acquafetta to reconsider hosting the jazz series at Downing Park. Bello stated on behalf of herself and her fellow colleagues that they would really hate to lose her. It really represented the best of what this

city has to offer. And it was a beautiful concert series. She remarked she is cutting her comments short so that we can move on to the budget presentation.

Councilman Dillard thanked everyone for coming out tonight. He urged the people to pay very close attention to the budget happenings.

Mayor Valentine remarked that he is going to reserve his comments for the next meeting, so that he is able to allot the city manager ample time to present the tentative budget.

Richard Herbek suggested to the council that they leave him with notice of evenings that work best for them. Then he is able to coordinate respective budget sessions with department heads.

There being no further comments at this time, this portion of the meeting was closed.

2012 BUDGET

Acting City Manager Richard Herbek presented the tentative budget for the year 2012. His Budget Message is included herewith. Also he has 100 copies of the budget available for anyone who would like to receive it. The meeting concluded with a brief power point presentation for the council and the public. [Note: COMPLETE COPY OF THE TENTATIVE BUDGET WITH GRAPHS IS AVAILABLE ON THE CITY OF NEWBURGH'S WEBSITE]

There being no further business to come before the council, the meeting adjourned at 9:47 P.M.

Respectfully Submitted,

**KATRINA COTTEN
DEPUTY CITY CLERK**