

A regular meeting of the City Council of the City of Newburgh was held on Monday, July 15, 2013 at 7:00 P.M. in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

Present: Mayor Kennedy, presiding; Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee- 5

The Prayer was led by Deacon Hubbard of Abraham's Table Inc., followed by the Pledge of Allegiance.

COMMUNICATIONS

Councilwoman Angelo moved and Councilwoman Lee seconded that the minutes of the Work Session meeting of June 13, 2013, the City Council meeting of June 17, 2013 and the Special City Council meeting of June 19, 2013 be approved.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy - 5

CARRIED

Councilwoman Angelo moved and Councilwoman Lee seconded that the *City Clerk's Report* and the *Registrar of Vital Statistics Report* for the month of June be received, filed and made available to the Press.

Ayes-Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

CARRIED

Councilwoman Angelo moved and Councilwoman Lee seconded that the *Civil Service Administrator's Report* for the month of June be received and filed only.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

CARRIED

ACKNOWLEDGMENT OF TRAYVON MARTIN TRAGEDY

Mayor Kennedy acknowledged the participants of the march. She recognizes the passion and the pain of the demonstrators concerning the outcome of the trial in the shooting death of Trayvon Martin. It is positive to see that so many people care about protecting rights and want to make sure that justice is done. Kennedy stated that we are counting on the U.S. Attorney General to investigate the civil rights aspect of this case. Here in our city we can focus on finding peaceful solutions to conflict and breaking down barriers between groups of people, so that in Newburgh we do not face the type of situation that occurred in Florida. Mayor Kennedy encouraged us to be a part of the solution and continue to work to keep peace in our city. We can all do our part by mentoring and supporting our youth and young adults. Help them find positive ways to express their creativity and energy. We appreciate the help and look forward to working with everybody in the community on this focus of keeping the peace.

PROPOSED PUBLIC HEARING

RESOLUTION NO.: 141 - 2013

OF

JULY 15, 2013

**RESOLUTION SCHEDULING A PUBLIC HEARING FOR AUGUST 19, 2013
TO HEAR PUBLIC COMMENT CONCERNING A LOCAL LAW AMENDING
CHAPTER 70 ENTITLED "PARKING VIOLATIONS BUREAU"
OF THE CODE OF THE CITY OF NEWBURGH TO INCREASE FINES
FOR CERTAIN PARKING VIOLATIONS**

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 Chapter 70, entitled "Parking Violations Bureau" of the Code of the City of Newburgh to Increase Fines for Certain Parking Violations 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 19th day of August, 2013, in the 3rd Floor Council Chambers, City Hall, 83 Broadway, Newburgh, New York.

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

Ayes-Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

PROPOSED PUBLIC HEARING

RESOLUTION NO.: 142 - 2013

OF

JULY 15, 2013

**RESOLUTION SCHEDULING A PUBLIC HEARING
FOR AUGUST 19, 2013 TO HEAR PUBLIC COMMENT
REGARDING THE HOUSING AND COMMUNITY DEVELOPMENT
NEEDS OF THE CITY OF NEWBURGH IN ORDER TO ASSIST
IN THE PREPARATION OF ITS HOUSING AND COMMUNITY
DEVELOPMENT PLAN FOR FISCAL YEAR 2014**

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 regarding the housing and community development needs of the City of Newburgh in order to assist in the preparation of its Housing and Community Development Plan for fiscal year 2014; 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 19th day August 2013 in the third floor Council Chambers located at 83 Broadway, City Hall, Newburgh, New York

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

PUBLIC HEARING

Mayor Kennedy called a public hearing to hear comment regarding the State Environmental Quality Review Act (SEQRA) rescinding Chapter 279, "Trees and Shrubs" and Chapter 296, "Waterfront Consistency Review", the adoption of Chapter 159 creating a Conservation Advisory Council and an amendment of Chapter 300, the Zoning Ordinance of the City of Newburgh, declaring the project to be an unlisted action, considering an Environmental Assessment Form (EAF), referring same to the Orange County Planning Department as required by Section 239 of the General Municipal Laws. She pointed out that this is essentially for the consolidation and streamlining of our land use boards.

Since there were no comments Mayor Kennedy closed the public hearing.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Sheila Murphy wanted some clarification on Resolution #133-2013 regarding the Impact X program. Also she wanted clarification on Resolution #133-2013. She knows there is a grant that the New York State Police receive for their work in the City of Newburgh. She asked a State police officer what is the purpose of them riding around on the streets of Newburgh. She was told that they are here because they have a \$100K grant for four years to help the City of Newburgh Police Department Thursday through Saturday.

Police Chief Michael Ferrara stated that Operation Impact X is a 10th generation grant that the city has received. The grant pays for policemen, patrols, crime analysis and strategic patrols, etc. The grant is valued at \$360K to the City of Newburgh Police Department. The total amount of the grant is approximately \$700K for Orange County. Also he explained that the Byrne Memorial Justice Assistance Grant is a \$35K grant to purchase computer software upgrades in the police department

Rosemary Smith spoke her concerns about Resolution #134-2013. She stated that the City of Newburgh PD can not seem to control its guns. And now we are talking about a 105th Security Force Squadron coming here. She pointed out that the squadron has machine guns. We seem to let police officers get away with recklessness. She is concerned about the National Guard coming here.

Mayor Kennedy explained that this is an agreement for the City and the Air National Guard to work together. This is for reporting and notifications and other supporting services when we have an emergency that calls for their help. The National Guard often helps cities during times when a State of Emergency is deemed.

Timothy Hayes-el commented about Resolution #142-2013. He pointed out that 70% of the residents of this city rent. Yet there is no rent control here. We have landlords that try to gerrymander a community. Some form of rent control needs to be formulated to help protect the residents.

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

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

Councilwoman Lee commented about the signs she sees people holding up in the audience. As she stated just before the meeting commenced, we need to fight the policies that give residents, police officers and anybody that carries a gun permission to use that weapon. This is what we have to fight. The people that commit these acts do so because they have been granted a certain type of permission to do it. They have been given permission to shoot Black kids. This is what it is. This is the way it has been. We have to make sure the policies change so that the action becomes a *crime*. People are going to jail for committing acts much less than that.

Lee remarked that the decision was unfair. There are a lot of demonstrations around the nation. She is involved in the internet demonstrations. She informed us that she takes this issue very seriously. She does not have a problem speaking out about it. And she does not have a problem *not* being that peaceful about it. She is angry. But there is much more damage that she can do with her pen than people could ever do with their fists, sticks, bottles and knives.

ADDITIONAL PUBLIC COMMENTS CONCERNING THE AGENDA

Mayor Kennedy re-opened this portion of the meeting, as she did not realize there were additional comments at this time.

Omari Shakur addressed his concerns about Resolution #132-2013 and the Operation Impact X program. Shakur stated that he and his supporters had a list of demands that resulted from a previous rally that was held that dealt with the same issues. For one thing, they do not want the grant. He wanted to list some alternative solutions to the grant or even some alternate situations that could be worked into the grant.

Chief Ferrera explained that if we did not receive the grant then we would lose four people in the police department. Also if we did not get the grant, the city would have to pay the \$360K. The grant is for three sworn officers and a civilian crime analyst.

Joan Young remarked that the first demand they are calling for is to address the community violence. She suggested that a program be instituted in which our children learn to value their own lives.

Juanita King demanded that the findings on a report of police misconduct be made available. The community would like to know regardless of what is on the report. What about the need for a grant that provides decent shelter? The current shelter in Newburgh has nineteen beds. We are worried about the police all the time. Stop putting guns in police officers' hands and start putting beds for people to lay their heads on. It is not all about the police. It is time for Newburgh to focus on something else. What about the homelessness and hunger. Do something that is going to uplift Newburgh, not help to kill Newburgh.

Margarita Knox demanded that we have a third-party legal entity, such as the NAACP or Michael Sussman, participate on a civilian complaint review board.

Carlos Raffloer stated that he sees many grants outlined in these resolutions. Yet there are a lot of people still out of work. He has submitted applications for these jobs, but he has not been hired. He feels like he is being brushed off. He asked the Mayor if she is going to work with the people or not.

Councilwoman Lee remarked that Mr. Sussman has offered the use of his office for organization and direction. It is still a bit scattered though. She would like to meet with the community participants in Sussman's office this Friday so that we can discuss these issues further. She stated that this resolution has very little to do with their particular concerns and demands. She acknowledged that they are very serious issues nonetheless.

This portion of the meeting was closed.

CITY MANAGER'S REMARKS

Interim City Manager James Slaughter announced that due to the current heat wave, the City of Newburgh has designated the Activity Center, located at 401 Washington Street, as a cooling center. The cooling center will be open this week until 9 P.M. Also the pool hours will be extended this week from 10 A.M. until 8 P.M. at Delano-Hitch Recreation Park. Additionally, the mist stick will be operational at Audrey Carey Park on Liberty Street, between Farrington and Third streets. These are opportunities for persons to cool off. The heat will be fairly oppressive for the rest of the week and we want to make sure residents are safe.

CITY MANAGER'S REPORT

RESOLUTION NO.: 131-2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO ARMANDO CABALLERO
TO THE PREMISES KNOWN AS 202 BROADWAY
(SECTION 29, BLOCK 7, LOT 8)**

WHEREAS, on February 4, 1982, the City of Newburgh conveyed property located at 202 Broadway, being more accurately described on the official Tax Map of the City of Newburgh as Section 29, Block 7, Lot 8, to Armando Caballero; and

WHEREAS, the property owner, by his attorney, Stephen P. Duggan, III, Esq., has requested a release of the restrictive covenants contained in said deed; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim 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 Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 132 - 2013

OF

JULY 15, 2013

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER ACCEPT A GRANT FROM THE STATE OF NEW YORK DIVISION OF CRIMINAL JUSTICE SERVICES WITH NO CITY MATCH FOR THE OPERATION IMPACT X PROGRAM TO ENHANCE LAW ENFORCEMENT IN THE CITY OF NEWBURGH TO ACHIEVE SUSTAINED, LONG-TERM CRIME REDUCTION THROUGH CONTINUATION OF THE CRIME ANALYST POSITION AND THE FIELD INTELLIGENCE OFFICER, FOCUSED ENFORCEMENT ON TARGETING OFFENDERS WHO ARE KNOWN TO BE VIOLENT CRIMINALS, THE PURCHASE OF A LARGE SCREEN TO BE USED FOR DIGITAL SIGNAGE WITH OTHER IMPACT PARTNERS AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE ANY DOCUMENTS AND TAKE SUCH ACTIONS REQUIRED TO CARRY OUT SUCH PROGRAM

WHEREAS, the City of Newburgh Operation Impact Partnership has been awarded a grant in an amount not to exceed \$324,550.00 under the Operation IMPACT X Program; and

WHEREAS, Operation IMPACT X is part of a comprehensive strategy to reduce crime in New York State by enhancing law enforcement by enabling local police agencies to better analyze crime patterns and data, expand the scope of the positions of Crime Analyst and Field Intelligence Officer, expand focused enforcement on targeting offenders who are known to be violent criminals; and

WHEREAS, the Program will enhance enforcement and prosecution efforts against crime in the City of Newburgh and no City matching funds are required;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he hereby is authorized to accept a grant award, from the New York State Division of Criminal Justice Services under the Operation IMPACT X Program, in an amount not to exceed \$324,550.00 with no City match required, to be used to carry out the program and implement the purposes set forth herein; and to execute all such further contracts and documentation, and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 133 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO APPLY FOR, ACCEPT IF AWARDED AND
ENTER INTO AN INTER-MUNICIPAL AGREEMENT BETWEEN
THE COUNTY OF ORANGE AND THE CITY OF NEWBURGH IN
CONNECTION WITH THE 2013 BYRNE MEMORIAL JUSTICE ASSISTANCE
GRANT PROGRAM**

WHEREAS, the Justice Assistance Grant (“JAG”) Program provides funds for various law enforcement agencies throughout the State of New York; and

WHEREAS, the City of Newburgh joined the County of Orange and other local law enforcement agencies in applying for the 2013 Byrne Memorial JAG, which provides funds for various important law enforcement functions as provided by the terms of the award including but not limited to street surveillance cameras, undercover vehicle availability, unmarked patrol vehicles, acquisition of an evidence management system, upgrade to the Live Scan fingerprinting system and related database compilation and access, technology and equipment, record-keeping, training and the enhancement of other important police functions; and

WHEREAS, the County has agreed to set aside \$35,000.00 from the 2013 Local JAG Award for the City of Newburgh to be used to enhance security in and around the City of Newburgh Police Department, which shall include but not be limited to a key scan system and a video surveillance system installed with interior and exterior cameras;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to enter into an inter-municipal agreement between the County of Orange and the City of Newburgh in connection with the 2013 Byrne Memorial JAG Program Award to receive funds through the County of Orange under the terms of the grant program and under the terms and conditions of the agreement, a copy of which is attached hereto, for various important law enforcement functions for the City of Newburgh and other local law enforcement agencies.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 134- 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH
THE 105TH SECURITY FORCES SQUADRON, STEWART AIR NATIONAL
GUARD BASE, NEWBURGH, NEW YORK FOR NOTIFICATION, REPORTING
AND
OTHER SUPPORTIVE SERVICES**

WHEREAS, the 105th Security Forces Squadron, Stewart Air Nation Guard Base, Newburgh, New York wishes to enter into a Memorandum of Agreement (“MOA”) with the City of Newburgh Police Department to provide notification, reporting and other supportive services; and

WHEREAS, said MOA is annexed hereto and made part hereof and it is deemed to be in the best interests of the City of Newburgh to enter into a MOA for such purposes;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to enter into a Memorandum of Agreement with the 105th Security Forces Squadron, Stewart Air Nation Guard Base, Newburgh, New York for notification, reporting and supportive services.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

134-13

MEMORANDUM OF

UNDERSTANDING BETWEEN

105th SECURITY FORCES SQUADRON, STEWART

AIR NATIONAL GUARD BASE

AND

CITY OF NEWBURGH POLICE DEPARTMENT

1. PURPOSE: This Memorandum of Understanding outlines a framework of cooperation and mutually beneficial support activities between the City of Newburgh Police Department (CNPD) and the 105th Security Forces Squadron (105 SFS), Stewart Air National Guard Base, Newburgh, New York.

2. AUTHORITY:

- a. Department of Defense (DOD) Directive 5525.5, *Cooperation with Civilian Law Enforcement Officials*
- b. Air Force Policy Directive (AFPD) 10-8, *Air Force Support to Civil Authorities*
- c. Air Force Instruction (AFI) 10-801, *Assistance to Civilian Law Enforcement Agencies*
- d. AFI 25-201, *Support Agreement Procedures*
- e. 10 United States Code (U.S.C.), Chapter 18, §§ 371-378, *Military Cooperation with Civilian Law Enforcement Officials*
- f. 18 U.S.C., § 1385, *Use of Army and Air Force as Posse Comitatus*
- g. AFI 31-201, *Law Enforcement Procedures*
- h. AFI 40-301, *Family Advocacy*

3. RESPONSIBILITIES:

a. City of Newburgh PD will:

(1) Notify 105 SFS if a military member is arrested off base, the responding officer(s) will contact Security Forces Base Defense Operations Center (BDOC) at 845-536-2355 and note on the top of the incident/investigation report "Copy to the Stewart Air National Guard Base (SANGB), 105 SFS" and the designated records personnel will ensure the copy is forwarded.

(2) Notify 105 SFS if Local Police Department receives any information that implicates SANGB personnel or resources in any criminal plan, drug activity, or indicates a threat to SANGB (e.g., terrorist plot).

(3) Notify 105 SFS of any commercial establishments in their jurisdiction that are off-limits locations and are known to be involved in the Trafficking of Persons.

RESOLUTION NO.: 135 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO EXECUTE VENDOR SERVICE AGREEMENTS WITH
VARIOUS SERVICE PROVIDERS AT A COST NOT TO EXCEED \$8,000.00
IN CONNECTION WITH THE CLOSEOUT OF THE
TWENTY FIRST CENTURY GRANT PROGRAM**

WHEREAS, by Resolution No.: 181-2009 of November 23, 2009, the City Council authorized the City Manager to accept monies from the New York State Department of Education for the 21st Century Community Learning Centers Grant; and

WHEREAS, said grant was awarded in the spring of 2008 for a five (5) year period; and

WHEREAS, the five (5) year grant period is ending, it is necessary and appropriate to enter into vendor service agreements to close out the Twenty First Century Grant Program with various service providers for the period beginning July 1, 2013 and ending on September 30, 2013 for the following amounts:

MTD Consultants	\$ 4,000.00
Eric Buxton	\$ 4,000.00

WHEREAS, the Council has reviewed the attached Agreements and has determined that it is in the best interest of the City of Newburgh and its residents expend such funds to close out said grant program;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager be and he is hereby authorized to execute Vendor Service Agreements with the service providers referenced herein above at a cost not to exceed \$8,000.00 in connection with the closeout of the Twenty First Century Grant Program.

James Slaughter remarked that the grant is scheduled to close at the end of September. He has not determined the reason as to why we did not receive funding this last round. He is going to speak with the Recreation Department to get a hold of some of the reports that were submitted. He will report back to the council at a later date.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

#135-13

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2013, by and between the CITY OF NEWBURGH, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "CITY," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and Eric Buxton, a firm with principal offices at PO Box 1931, Newburgh, NY 12550, hereinafter referred to as "VENDOR."

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the "SERVICES") which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter "Department Head").

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall become the property of the CITY, unless otherwise provided for by the parties. As such, CITY, in its sole discretion, shall have the right to use, copy, disseminate and otherwise employ or dispose of such material in any manner as it may decide with no duty of compensation or liability therefore to VENDOR or to third parties. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such intellectual

property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY's rights regarding same. VENDOR agrees to defend, indemnify and hold harmless the CITY for failing to notify CITY of same.

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning July 1, 2013, and ending September 30, 2013.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within sixty (60) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$5,000.00 has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than one (1) year after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

ARTICLE 4. EXECUTORY CLAUSE

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

ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR 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. VENDOR 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. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR 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 CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'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

VENDOR 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. VENDOR 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 CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR 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 CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.

ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR 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 VENDOR 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 or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or 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 VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (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 the other customers at the same prices being bid or quoted 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, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR 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 VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR 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 CITY, 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 CITY 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 AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest 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 City Manager of the CITY. 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 CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds

for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

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

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

ARTICLE 10. BOOKS AND RECORDS

VENDOR 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

VENDOR 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. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are

subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR 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. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, 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 CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right

to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY 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 14. PROTECTION OF CITY PROPERTY

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

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

VENDOR agrees to defend, indemnify and hold the CITY 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 CITY property described in this Article.

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

ARTICLE 15. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary

information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDORS obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

ARTICLE 16. TERMINATION

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

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

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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR 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 CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

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

ARTICLE 17. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 18. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY 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 CITY for any reason whatsoever including, without limitation, tax

delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 19. 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 City Manger of the CITY, 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 20. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. VENDOR 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 21. CURRENT OR FORMER CITY EMPLOYEES

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR 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 CITY for such

falsity or breach, nor shall it constitute a waiver of the CITY'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 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 supersede 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 payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, 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.

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

THE CITY OF NEWBURGH

VENDOR

BY: _____
JAMES SLAUGHTER,
CITY MANAGER

BY: _____
ERIC BUXTON

DATE: _____

DATE: _____

SCHEDULE A
SCOPE OF SERVICES

Scope of Work:

Closeout the 21st Century CLC program for the City of Newburgh effective July 1 -
September 30, 2013.

RESOLUTION NO.:136 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH PITNEY BOWES
FOR AN AMOUNT NOT TO EXCEED \$22,380.00
FOR THE LEASE OF A NEW POSTAGE MACHINE FOR CITY HALL**

WHEREAS, the City of Newburgh has an existing lease with Pitney Bowes for the postage machine in City Hall; and

WHEREAS, a machine is available at a competitive price from Pitney Bowes; pursuant to the terms of a contract attached hereto; and

WHEREAS, entering into a new lease will yield a total savings of \$6,000.00; and

WHEREAS, this Council has reviewed such agreement and finds that the execution of such agreement is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to enter into an agreement with Pitney Bowes, in substantially the same form as annexed hereto and subject to such other terms and conditions as may be required by Counsel, to lease a new postage machine for City Hall.

Councilwoman Angelo moved and Councilwoman Lee seconded that resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

TERM RENTAL TERMS AND CONDITIONS

This is a term rental agreement with Pitney Bowes Global Financial Services LLC (PBGFS), Pitney Bowes' financing company. PBGFS provides financing options to our customers. PBGFS does not warrant, service or otherwise support the equipment. Those services are provided by Pitney Bowes Inc. (PBI) as stated in the Pitney Bowes Terms. Due to federal regulations, only PBI can own an IntelliLink® Control Center or Meter. Therefore, those items are rented to you, rather than leased or sold.

L1. DEFINITIONS

L1.1 All capitalized terms that are not defined in this document are defined in the "Definitions" section of the Pitney Bowes Terms.

L2. AGREEMENT

- L2.1 You will make each Monthly Payment by the due date shown on our invoice.
- L2.2 You may not cancel this Agreement for any reason except as expressly set forth in Section L10 below. All payment obligations are unconditional.
- L2.3 Our remedies for your failure to pay on time or other defaults are set forth in the "Default and Remedies" section of the Pitney Bowes Terms.
- L2.4 You authorize us to file a Uniform Commercial Code financing statement naming you as debtor/lessee with respect to the Equipment.

L3. PAYMENT TERMS AND OBLIGATIONS

- L3.1 We will invoice you in arrears each month for all payments on the Order (each, a "Monthly Payment"), except as provided in any SOW attached to this Agreement.
- L3.2 Your Monthly Payment may include a one-time origination fee, amounts carried over from a previous unexpired lease, and other costs.
- L3.3 If you request, your IntelliLink Control Center/Meter Rental fees, Service Level Agreement fees, and Soft-Guard® payments ("PBI Payments") will be included with your Monthly Payment and begin with the start of the Term. Your Monthly Payment will increase if your PBI Payments increase.
- L3.4 Your obligations, including your obligation to pay the Monthly Payments due in any fiscal year during the term of this Agreement, shall constitute a current expense for such fiscal year and shall not constitute indebtedness within the meaning of the constitution and laws of the state in which you are located. Nothing herein shall constitute a pledge by you of any taxes or other moneys (other than moneys lawfully appropriated from time to time by or for your benefit for this Agreement) to the payment of any Total Payment due under this Agreement.

L4. EQUIPMENT OWNERSHIP

L4.1 PBI owns any IntelliLink Control Center or Meter. Title to the Equipment shall pass to you upon installation. However, you and we agree that title shall automatically revert to us in the event of default, or termination due to your non-appropriation under Section L10.

L5. TERM

L5.1 This Agreement shall commence on the date of delivery and shall continue until the earlier of (i) termination at our option upon the occurrence of an event of default, or (ii) the occurrence of an event of a non-appropriation under Section L10, or (iii) the expiration of the Term and your payment of all Monthly Payments and other sums due and your fulfillment of all other obligations under this Agreement.

L6. SURRENDER OF EQUIPMENT

L6.1 If you default, or terminate this Agreement by non-appropriation under Section L10, you, at your expense, shall return all Equipment by delivering it to us in the same condition as when delivered to you, reasonable wear and tear excepted, to such place or on board such carrier, packed for shipping, as we may specify. Until the Equipment is returned as required above, all terms of this Agreement remain in effect including, without limitation, your obligations to make payments relating to your continued use of the Equipment and to insure the Equipment.

L7. WARRANTY AND LIMITATION OF LIABILITY

- L7.1 WE (PBGFS) MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INTERFERENCE OR INFRINGEMENT.
- L7.2 PBI provides you with (and we assign to you our rights in) the limited warranty in the Pitney Bowes Terms.
- L7.3 WE ARE NOT LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES), OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT.

L8. EQUIPMENT OBLIGATIONS

- L8.1 Condition and Repairs. You will keep the Equipment free from liens and encumbrances and in good repair, condition, and working order.
- L8.2 Inspection. We may inspect the Equipment and any related maintenance records.
- L8.3 Location. You may not move the Equipment from the location specified on the Order without our prior written consent.

L9. RISK OF LOSS

- L9.1 You bear the entire risk of loss to the Equipment from the date of shipment by PBI until the end of the Term (including any extensions), regardless of cause, ordinary wear and tear excepted ("Loss").
- L9.2 No Loss will relieve you of any of your obligations under this Agreement. You must immediately notify us in writing of the occurrence of any Loss.
- L9.3 You will keep the Equipment insured against Loss for its full replacement value under a comprehensive policy of insurance or other arrangement with an insurer of your choice, provided that it is reasonably satisfactory to us ("Insurance"). YOU MUST CALL US AT 1-800-732-7222 AND PROVIDE US WITH EVIDENCE OF INSURANCE.

L10. NON-APPROPRIATION

L10.1 You warrant that you have funds available to pay all payments until the end of your current fiscal period, and shall use your best efforts to obtain funds to pay all payments in each subsequent fiscal period through the end of the Term. If your appropriation request to your legislative body, or funding authority ("Governing Body") for funds to pay the payments is denied, you may terminate this Agreement on the last day of the fiscal period for which funds have been appropriated, upon (i) submission of documentation reasonably satisfactory to us evidencing the Governing Body's denial of an appropriation sufficient to continue this Agreement for the next succeeding fiscal period, and (ii) satisfaction of all charges and obligations under this Agreement incurred through the end of the fiscal period for which funds have been appropriated, including the return of the Equipment at your expense.

L11. REPRESENTATIONS

L11.1 You hereby represent and warrant that (a) you are a state or political subdivision thereof within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"); and (b) you have the power and authority under applicable law to enter into this Agreement and you have been duly authorized to execute and deliver this Agreement and carry out your obligations hereunder. You acknowledge that a portion of each Monthly Payment you shall pay includes interest and that this Agreement is entered into based on the assumption that the interest portion of each Monthly Payment is not includable in gross income of the owner thereof for Federal income tax purposes under Section 103(a) of the Code. You shall, at all times, do and perform all acts and things necessary and within your control in order to assure that such interest component shall be so excluded. If any interest is determined not to be excludible from gross income, your Monthly Payment shall be adjusted in an amount sufficient to maintain our original after tax yield utilizing our consolidated marginal tax rate, which adjusted Monthly Payments you agree to pay as provided in this Agreement, subject to Section L10. The rate at which the interest portion of Monthly Payments is calculated is not intended to exceed the maximum rate or amount of interest permitted by applicable law. If such interest portion exceeds such maximum, then at our option, if permitted by law, the interest portion will be reduced to the legally permitted maximum amount of interest, and any excess will be used to reduce the principal amount of your obligation or be refunded to you. You shall not do (or cause to be done) any act which will cause, or by omission of any act allow, this Agreement to be an "arbitrage bond" within the meaning of Section 148(a) of the Code or a "private activity bond" within the meaning of Section 141(a) of the Code. At the time of your execution of this Agreement, you shall provide us with a properly prepared and executed copy of the appropriate US Treasury Form 8038-G or 8038-GC and you appoint us as your agent for the purpose of maintaining a registration system as required by Section 149(a) of the Code. This Section shall survive the termination of this Agreement.

L12. MISCELLANEOUS

- L12.1 If more than one customer is named in this Agreement, liability is joint and several.
- L12.2 YOU MAY NOT ASSIGN OR SUBLET THE EQUIPMENT OR THIS AGREEMENT WITHOUT OUR PRIOR WRITTEN CONSENT, WHICH CONSENT WILL NOT BE UNREASONABLY WITHHELD.
- L12.3 We may sell, assign, or transfer all or any part of this Agreement or the Equipment. Any sale, assignment, or transfer will not affect your rights or obligations under this Agreement.

RESOLUTION NO.: 137 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH SHAMROCK SHOWS, INC.
FOR AMUSEMENT RIDES, ATTRACTIONS AND CONCESSIONS AT
THE CITY OF NEWBURGH INTERNATIONAL FESTIVAL**

WHEREAS, the City of Newburgh will hold its annual International Festival on Friday, August 30, 2013 through Monday, September 2, 2013, dates inclusive;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to enter into an agreement, a copy of which is annexed hereto, and in a form subject to approval of the Corporation Counsel with such other terms and conditions as Corporation Counsel may require, with Shamrock Shows, Inc. for services in connection with the City of Newburgh International Festival.

Councilwoman Angelo pointed out that the back page of their sheets itemizes everything that the carnival will be giving us. Shamrock is giving us a good deal. This is all profit to the City, as we do not put any money into this.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of July, 2013, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the “**CITY**,” with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and **SHAMROCK SHOWS, INC.**, a firm with principal offices at 338 Willow Tree Road, Milton, New York 12547, hereinafter referred to as “**VENDOR**.”

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter “Department Head”).

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning August 30, 2013, and ending September 2, 2013.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may

be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule A, which is attached to and is part of this Agreement.

VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule A, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within sixty (60) days after receipt of a CITY Claimant’s

Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$0.00 ZERO Dollars has been established for the scope of SERVICES and/or the supply of goods rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-

exceed cost if the CITY'S authorization by the City Manager 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 CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR 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. VENDOR 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. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR 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 CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'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

VENDOR 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.

VENDOR 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 CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an

interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR 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 CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise

refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.

ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR 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 VENDOR 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 or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or 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 VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (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 the other customers at the same prices being bid or quoted 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, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR 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 VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR 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 CITY, 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 CITY 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
AND SUBCONTRACTING**

VENDOR shall not assign any of its rights, interest 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 City Manager of the CITY. 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 CITY shall be subject to all of the terms and conditions of this Agreement.

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

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

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

ARTICLE 10. BOOKS AND RECORDS

VENDOR 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

VENDOR 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. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall

submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR 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. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation insurance, liability insurance covering personal injury and property damage, and other insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature

of the SERVICES to be performed. Except for Workers' Compensation and professional liability, 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 obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

<u>Type of Coverage</u>	<u>Limit</u>
Worker's Compensation	Statutory
Employer's liability	
\$1,000,000	
or similar insurance	each
occurrence	
Automobile liability	
\$1,000,000	
	aggregate
Bodily Injury	
\$2,000,000	
	each
	occurrence
Property Damage	
\$1,000,000	

<p>each</p> <p>occurrence</p> <p>Comprehensive General</p> <p>\$1,000,000</p> <p>Liability, including</p> <p>Broad form contractual</p> <p>\$2,000,000</p> <p>Liability, bodily injury</p> <p>occurrence</p> <p>and property damage</p> <p>Professional liability</p> <p>\$1,000,000</p> <p>(If commercially available</p> <p>aggregate</p> <p>for your profession)</p> <p>\$2,000,000</p> <p>claim</p>	<p>each</p> <p>aggregate</p> <p>each</p> <p>each</p>	<p>VENDOR shall attach to this Agreement certificates of insurance evidencing VENDOR'S compliance with these requirements.</p> <p>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 cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.</p>
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To the extent it is commercially available, each policy of insurance shall be provided on an “occurrence” basis. If any insurance is not so commercially available on an “occurrence” basis, it shall be provided on a “claims made” basis, and all such “claims made” policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR’S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

ARTICLE 14.
INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the

CITY, 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 CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an

employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY 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 CITY PROPERTY

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

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

VENDOR agrees to defend, indemnify and hold the CITY 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 CITY property described in this Article.

The rights and remedies of the CITY 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. TERMINATION

The CITY may, by written notice to VENDOR effective upon mailing,

terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

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

B. Furnishing within thirty (30) days an inventory to the CITY of all

equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR 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 CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will

be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

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

ARTICLE 17. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 18. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the

CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY 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 CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

**ARTICLE 19. 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 City Manger of the CITY, 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 20. GOVERNING
LAW**

This Agreement shall be governed by the laws of the State of New York. VENDOR 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 21. CURRENT OR FORMER CITY EMPLOYEES

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR 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 CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'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 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 supersede 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 payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, 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.

ARTICLE 24: CLOSE OUT & CLEAN UP

The parties agree that Shamrock (VENDOR) shall make its best effort to remove all property and equipment from the site no later than the end of the day, September 4, 2013. However, in the event of unforeseen delays or other circumstances beyond the control of the parties, Shamrock shall have until September 5, 2013 to remove all such property and equipment from the site.

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

THE CITY OF NEWBURGH

SHAMROCK SHOWS, INC.

BY: _____

BY: _____

JAMES A. SLAUGHTER,

COLIN O'KEEFE

INTERIM CITY MANAGER

DATE: _____

DATE: _____

APPROVED AS TO FORM

MICHELLE KELSON

Corporation Counsel

KATHRYN NIVINS

Acting City Comptroller

SCHEDULE A

SCOPE OF SERVICES

RESOLUTION NO.: 138 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO
ENTER INTO AN AMENDMENT TO THE AGREEMENT WITH C.T. MALE
ASSOCIATES, P.C.
FOR PROFESSIONAL ENVIRONMENTAL/ENGINEERING SERVICES AND
AUTHORIZING A CHANGE ORDER FOR THE REQUIRED SITE
MANAGEMENT PLAN FOR THE CONSOLIDATED IRON AND METAL SITE**

WHEREAS, by Resolution No. 131-2010 of June 14, 2010, the City Council of the City of Newburgh authorized the City Manager to enter into an agreement with C.T. Male Associates, P.C. in an amount not to exceed \$8,985.00 for professional environmental/engineering services in connection with the required Site Management Plan for the Consolidated Iron and Metal Site; and

WHEREAS, due to unavailable or incomplete information provided to the City in connection with the clean-up of the Consolidated Iron and Metal Site, C.T. Male was required to perform additional work over a longer period of time than originally set forth in the request for proposals issued by the City for such professional engineering services at an additional cost of \$13,015.00; and

WHEREAS, funding for the additional scope of work shall be derived from H1.1440.0400.5405.2010;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager be and he is hereby authorized to enter into an amended agreement with C. T. Male Associates in the form of Change Order No. 1 in an additional amount not to exceed \$13,015.00 for professional environmental/engineering services in connection with the required Site Management Plan for the Consolidated Iron and Metal Site.

Councilman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

138-13
C.T. MALE ASSOCIATES



**TECHNICAL SERVICES
CHANGE ORDER**

ENGINEERING, SURVEYING, ARCHITECTURE &
LANDSCAPE ARCHITECTURE, P.C.

50 Century Hill Drive
Latham, NY 12110
Tel. 518.786.7400
FAX 518.786.7299

NUMBER: **001**

DATE OF ISSUE: 7/12/13

PROJECT NAME: Consolidated Iron Site Management Plan
PROJECT NO. 11.1182

CLIENT'S NAME: CITY OF NEWBURGH

CLIENT'S ADDRESS: City Hall
83 Broadway
Newburgh, NY 12550

CLIENT CONTACT: CRAIG MARTI, PE, CITY ENGINEER

This Change Order incorporates changes and/or additions to the original Scope of Services for Contract Agreement dated March 2, 2010. All Provisions of Agreement in the original signed Contract Agreement apply to this Change Order, unless otherwise specified herein.

A. DESCRIPTION OF CHANGE:

C.T. Male Associates Engineering, Surveying, Architecture & Landscape Architecture, P.C. (C.T. Male Associates) agreed to prepare the Site Management Plan (SMP) based on the RFP for the project. The RFP indicated that the SMP would be based on the New York State Department of Environmental Conservation's (NYSDEC) template for preparing Site Management Plans, which presumes that a Final Engineering Report (FER) is available to serve as the basis for the SMP. It was expected that the FER was to be provided to the City by the USEPA prior to commencement of the work. However, the USEPA was unable to provide the FER, and C.T. Male Associates was directed by the City based on USEPA request in an email to Craig Marti from the USEPA Project Manager Mike Negrelli dated September 6, 2012 to proceed with preparation of the SMP based on the uncertified reports and partial information which were available at the time.

In addition to the FER, another document expected to be available during the preparation of the SMP is the Remedial Action Work Plan. This document was not available, and we were provided with a report identified as the Remedial Action Report (RAR) dated April 3, 2012 and prepared by Stantec of Albany, New York. The report was lacking for the purposes of preparing an SMP, and the amount of effort expended on our part to prepare the SMP was more than double what would normally be required. We have outlined some of the deficiencies in the report in a letter to the City dated September 21, 2012.

The SMP was prepared based on the information available and provided at the time. Based on the USEPA's comment letter dated March 15, 2013, substantial additional information will need to be included and effort expended in order to finalize the SMP in a manner which is sufficient for regulatory agency approval and which is protective of the owner of the site (the City). Significant elements of the site management plan must be changed to address the March 15, 2013 comment letter.

C.T. MALE ASSOCIATES



**TECHNICAL SERVICES
CHANGE ORDER**

ENGINEERING, SURVEYING, ARCHITECTURE &
LANDSCAPE ARCHITECTURE, P.C.

50 Century Hill Drive
Latham, NY 12110
Tel. 518.786.7400
FAX 518.786.7299

NUMBER: **001**

DATE OF ISSUE: 7/12/13

B. CHANGE IN CONTRACT PRICE:

Original Contract Price	\$8,985
Contract Price after previous Change Order	N/A
Net Change in Contract Price due to this Change Order	\$13,015
New Contract Price including this Change Order	\$22,000

APPROVED AND ACCEPTED BY:

CITY OF NEWBURGH

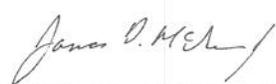
**C.T. MALE ASSOCIATES ENGINEERING,
SURVEYING, ARCHITECTURE &
LANDSCAPE ARCHITECTURE, P.C.**

By: _____

Date: __

Name:

Title:

By: 

Date: July 12, 2013

Name: James D. McIver, Jr.

Title: Managing Geologist, Hudson Valley Region

RESOLUTION NO.: 139 - 2013

OF

JULY 15, 2013

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE A CONTRACT WITH BARTON & LOGUIDICE, P.C. FOR PROFESSIONAL ENGINEERING SERVICES FOR THE EMERGENCY RECONSTRUCTION OF THE WEST TRUNK SEWER LINE AND RELATED IMPROVEMENTS AT A COST NOT TO EXCEED SIX HUNDRED NINETY THOUSAND DOLLARS

WHEREAS, a major sewer trunk line failure occurred on a portion of the West Trunk Sewer Line, resulting in a spillage of raw sewage into the Quassaick Creek; and

WHEREAS, due to the discharge of raw sewage waste being a threat to the health and safety of the City's residents as well as an environmental threat to the Hudson River, on October 5, 2012, the City Manager of the City of Newburgh declared a state of emergency pursuant to Section 24 of the New York State Executive Law in order to facilitate immediate repairs to the West Trunk Sewer Line; and

WHEREAS, by Resolution No. 179-2012 of October 9, 2012, this Council authorized the City Manager to retain the services of a qualified engineering firm to evaluate the immediate stabilization of the West Sewer Trunk Line, prepare documents necessary to obtain funding through the Environmental Facilities Corporation and determine the scope of the necessary permanent repairs to the West Sewer Trunk Line and the Quassaick Creek Corridor; and

WHEREAS, pursuant to the authority granted to the City Manager by Resolution No. 179-2012 of October 9, 2012, the City retained the services of Barton & Loguidice, P.C. which prepared a Preliminary Engineering Report, last revised November 15, 2012 and approved by the New York State Environmental Facilities Corporation on November 20, 2012; and

WHEREAS, by Resolution No. 187-2012 of October 22, 2012, this Council authorized the issuance of bonds in the amount of \$9,144,000.00 and appropriated said amount for the emergency reconstruction of the West Trunk Sewer Line and related improvements; and

WHEREAS, the City has secured long and short-term financing of the emergency reconstruction of the West Trunk Sewer Line and related improvements through New York State Environmental Facilities Corporation; and

WHEREAS, Barton & Loguidice, P.C. has prepared a proposal for the scope of professional engineering services necessary to complete the work outlined in the Preliminary Engineering Report at a cost not to exceed \$690,000.00, which amount is consistent with the opinion of probable cost as outlined in the Preliminary Engineering Report; and

WHEREAS, funding for such project shall be derived from HG1.8130.0400.8200.2013; and

WHEREAS, this Council has determined that entering into such contract is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, that the Interim City Manager is hereby authorized to execute an agreement for professional engineering services with Barton & Loguidice, P.C. for the scope of work outlined in the proposal dated June 28, 2013 in an amount not to exceed \$690,000.00, with other provisions as Corporation Counsel may require, for the emergency reconstruction of the West Sewer Trunk Line and related repairs and for the stabilization of the Quassaick Creek Corridor.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

Celebrating over 50 years of service

July 1, 2013

Mr. Craig Marti, P.E.
City Engineer
City of Newburgh
83 Grand Street
Newburgh, New York 12550

RE: West Trunk Sewer & Stream Corridor Stabilization and Restoration
Proposal for Professional Services

Dear Mr. Marti,

In response to your request, Barton & Loguidice, P.C. (B&L) is pleased to continue to assist the City with repair of the West Trunk Sewer and restoration of washout damage along the Quassaick Creek Corridor. Herein please find our proposal for continuation of professional services for the investigations and design of the West Trunk Sewer repairs, investigations and design of the South Interceptor Sewer repairs, and design of the stabilization and restoration of approximately 2,000 feet of the Quassaick Creek Corridor from Holden Dam to south of the low head dam.

Background:

In July of 2012 and again in October 2012, sections of the City's West Trunk Sewer collapsed spilling untreated wastewater into the Quassaick Creek. The City took immediate action to contain the spilling sewage with installation of corrugated HDPE piping in the area of the sewer collapse. B&L has assisted the City with implementation of further immediate repairs, development of a long term remediation strategy and securing Environmental Facilities Corporation (EFC) funding for implementation of the repairs. At this point a cured-in-place liner has been installed within approximately 1,500 LF of the sewer, and The next steps in repairing the sewer and stream bank will be to continue the investigations of the integrity of the sewer along the creek up to Walsh Road, and cleaning / investigation of the Southern Interceptor Sewer Downstream of the CSO #002 regulator. Moreover, the section of the Quassaick Creek parallel to the West Trunk Sewer along the southern boundary of the City is eroding its stream banks. This is resulting in ongoing slope failures which have undermined and contributed to the collapse of sections of the West Trunk Sewer. Within the Preliminary Engineering Report for the West Trunk Sewer Improvements prepared by Barton & Loguidice, P.C. last revised November 15, 2012, it is recommended that the Quassaick Creek stream corridor be stabilized along the West Trunk Sewer to prevent future sewer collapse.

The scope of services proposed for advancing these next steps in the remediation plan are as follows:

Scope of Services:

Sanitary Sewer

- CCTV & Clean 5,000 LF 54-inch West Trunk Sewer from Dickson St / Walsh Road to CSO #002
- CCTV & Clean 4,600 LF 36-inch Southern Interceptor Sewer from CSO#002 to the WWTF
- CCTV & Clean 3,500 LF 60-inch Combiner Sewer Overflow pipe from CSO#002 to the Hudson River
- CCTV & Clean 500 LF 36-inch Sewer along Route 9W (Robinson Ave) to the West Trunk Sewer
- CCTV & Clean 500 LF 36-inch Sewer along Mill Street to the West Trunk Sewer
- Prepare Plans, Specifications, & Contract Documents for improvements/repairs to all of the above

The experience to **listen.**
The power to **solve.**





Stream Corridor

- Prepare Plans, Specifications, & Contract Documents for approximately 2,000 LF of stream bed and associated banks, reconstruction, stabilization, restoration from Holden Dam to just downstream of CSO#002 Regulator

West Trunk Sewer Corridor

- Prepare Plans, Specifications, & Contract Documents for clearing and grubbing a 10-foot wide path along the sewer route Dickson St / Walsh Road to the WWTF.
- Prepare Plans, Specifications, & Contract Documents for developing a roadway/pathway from CSO#002 to Walsh Road for the purposes of access and maintenance.

Public Bidding and Design Services During Construction:

- Assist the City in securing public bids for construction of the sewer and stream repairs.
- Monitor construction to verify compliance with design plans and specifications, administer the construction contracts on behalf of the City and address engineering and contract issues that develop during construction.

Phase 1 – Kickoff / Project Scoping Meeting

Following Agreement execution, our Team will attend a project kick-off meeting with City personnel. At this meeting, project contacts, communication protocol and point of contact for addressing questions, responsibilities, scope of work, document distribution, project schedule, critical success factors, other items pertaining to project implementation, and deliverables will be discussed and agreed upon. A principal outcome of the scoping meeting is to develop a consensus among all project participants as to the primary objectives to be accomplished, as well as the implemented methods by which they will be achieved. This meeting is also a venue in which to have initial conversations and share ideas regarding conceptual-level approaches to the project. B&L will prepare and distribute minutes of the meeting within ten (10) days.

Subsequent to the project scoping meeting and establishment of meeting minutes / goals and objectives memorandum, B&L will refine their proposed conceptual-level approach for implementation of the project to reflect items discussed in the project scoping meeting. In addition, B&L will review the timeframes and submissions for the current (2013) round of CFA's to identify any potential options for additional project funds to offset the existing sewer fund obligation, if we identify any potential funding opportunities, we will file an application for a grant. This revised approach will set the framework for developing a plan for site assessment, data collection, and site (stream reach) remediation design that implements effective, reliable, and implementable methods for obtaining useable data and satisfies the identified goals and objectives of the study, including long-term protection of the adjacent sewer line.

Phase 2 – Site Reconnaissance & Data Collection:

Review Background Information

B&L will review pertinent background information including, but not limited to, the following:

- Available record drawings
- Available flow monitoring data included in the Long Term Control Plan and Characterization Report
- Available closed-circuit television (CCTV) logs – B&L has already reviewed the logs and videos from previous inspections conducted in the Fall of 2012 by TAM Enterprises. However, much of the video is not clear and an updated inspection will need to be conducted and has been included in this proposal.
- Obtain any record information that relates to a variety of problems including observed overflows, modeled, measured or observed surcharges.



- Complete a preliminary field investigation to review existing field conditions and familiarize ourselves with the layout of the collection system and known problem areas.

Topographic Survey & Base Mapping Services

A Topographic Survey of the 2,000 LF corridor from Holden Dam to the low head dam downstream of the regulator has already been authorized separately. Additional Survey is anticipated along the sewer as it crosses the CSX Rail line and turns eastward along the stream corridor. Also, additional survey is anticipated to be necessary along the Southern Interceptor and the Combined Sewer Overflow Piping. It is anticipated that the City of Newburgh will provide tax mapping in ACAD format to overlay on the survey.

Easement procurement is not anticipated due to the fact that repairs and rehabilitation are expected to be completed on the existing sewer mains and it is presumed that the City has authority to access the sewers for maintenance and repair. Through review of records provided by the City, and any deed research performed by a Title Company, retained separately by the City, if it is found that sufficient right-of-way does not exist, B&L can assist the City with procurement of permanent easements along the sewer routing under a separate authorization. We have included assisting the City with the procurement of temporary access easements within our scope of work through preparation of supporting descriptions or maps to be used by others, such as the Title Company, Surveyor, or City Personnel during the negotiations or obtaining of easements.

Subsurface Investigations

Subsurface investigations are not anticipated for this project and therefore are not included in this proposal. Should they become necessary, subsurface investigations would be provided as an additional service under separate authorization.

Sewer System Assessment

To fully assess the sewer, a series of field investigations will be completed including the following:

Sewer Location

The specific routing of the West Trunk Sewer is not clearly identified, particularly as it travels south from Dickson Street along Walsh Road, and east along the Quassaick Creek Corridor. B&L will subcontract to a utility locating service to locate the West Trunk Sewer along the Quassaick Creek Corridor. Buried sewer manholes will also be located during this work, to facilitate uncovering them for future access and inspections.

Manhole Inspections

B&L will inspect the manholes along the West Trunk Sewer and Southern Interceptor Sewer and CSO#2 Overflow Sewer. These inspections will include opening and inspecting the interior of the manholes, from the ground surface. B&L may enter the structures for closer inspection with assistance from the City, as the manholes are considered a "confined space." Where manhole entry for inspection is determined necessary, it will be necessary for the City to provide properly trained personnel and safety equipment to facilitate safe confined space entry for B&L personnel. During the inspection, the physical dimensions, construction materials and defects associated with the manhole will be documented. A standard inspection form will be prepared by B&L to be followed in the field. The inspection form will be supplemented with photographs in the event there are particular defects observed that merit further analysis. It is assumed that the manholes will be readily accessible and should they not be, B&L will retain the services of a contractor to uncover the manholes, prior to scheduled inspections.



Closed Circuit Television (CCTV) Inspections

Based on our understanding of the project and review of the existing CCTV inspections, B&L has determined that the following sections of sewer need to be cleaned and inspected by CCTV:

1. Approx. 5,000 LF West Trunk Sewer from the Dickson Street/Walsh Road intersection to CSO #002,
2. Approx. 4,600 LF of the Southern Interceptor Sewer from CSO#002 to the Wastewater Treatment Plant,
3. Approx. 3,500 LF for the Overflow Pipe from CSO#002 to the Hudson River Outfall.
4. Approx. 1,000 LF re-inspection of the contributory sewer mains along Route 9W and Mill Street

These inspections will indicate pipe sags, displaced joints and debris, root ball intrusions or other obstacles that would prevent the pipe from being repaired completely through the use of trenchless technology. For the purpose of this proposal, B&L is anticipating that cleaning and CCTV inspection for approximately 12,000 linear feet. It is assumed that bypass pumping will be subcontracted separately by B&L as part of the inspections.

Stream Assessment/Evaluation

Evaluation of the existing watershed conditions

In order to fully evaluate the existing condition of the project reach and impact of the stream upon the adjacent sewer line corridor, B&L will undertake an assessment of existing stream corridor conditions.

GIS Database/Existing Information Review

It is anticipated that the countywide GIS database and existing studies and reports available through Orange County Water Authority and others will be primary resources for providing valuable background information. In addition, it is anticipated that the City will provide B&L with any necessary GIS files. B&L will obtain and review relevant background information from these sources, identify data gaps, and work to obtain additional supporting information as needed to inform the stabilization design as needed.

Assessment of Existing Hydrologic Conditions

An assessment of existing hydrology associated with the project reach will be performed using the StreamStats web-based Geographic Information Systems (GIS) application developed by the US Geological Survey. The application utilizes drainage basin characteristics to obtain estimates of the peak discharges for various year design storms (1.25-, 1.5-, 2-, 5-, 10-, 25-, 50-, 100-, and 500-year recurrence intervals). Peak flow rates will be tabulated for each of the seven targeted stream reaches. This information will be incorporated into HEC-RAS modeling discussed below.

Field Reconnaissance

In addition to review of the background information, B&L will conduct physical reconnaissance and geomorphic assessment of the project reach for the purpose of understanding the root causes of instability and processes affecting the reach, degree of disparity from stable channel form, and development of feasible restoration / remediation measures specific to the reach or localized portions thereof. Field reconnaissance will also include evaluation of impacts within the adjacent upland portions of the watersheds and identification of methods for remediating impacts either at the source, or through various components of the in stream restoration / remediation design. This methodology provides a more holistic method of evaluating impacts and addressing the processes that represent the root causes of impairment in developing feasible, sustainable solutions for remediation of the project reach.

In addition to the defined project reach, reconnaissance and data collection within the reach upstream of Holden Dam may be necessary should the City determine to move forward with the dam removal component of the project. Should the dam be removed or breached as part of the project, field reconnaissance of the upstream reach will be required in order to develop post-removal stabilization and restoration designs for the stream channel upstream of the dam site. These services are included in the Dam Removal Scope.



Specific components of the field reconnaissance and data collection effort include, but are not necessarily limited to, the following:

Topographic Survey

B&L will contract the services of a licensed professional land surveyor in New York to collect a topographic survey of the stream corridor and adjacent areas. This topographic survey will serve as base mapping for the conceptual-level and final design drawings for the project reach. Data included in the existing topographic survey will include locations of all above ground and underground structures and infrastructure, topography of the site at one-foot contour intervals, project area boundaries, land parcel ownership (based on tax mapping), and notable landscape features including historical and archaeological resources. Stream corridor characteristics such as cross-section geometry and detailed bed profile survey will be included. This work will be incorporated as part of the survey work needed as part of the ongoing sewer line project, and is not included as a separate cost item in this proposal for stream stabilization work.

Geomorphic Assessment

B&L will conduct a geomorphic assessment of the project reach and appropriate reference reach, which will include the following elements:

- Survey of Cross-section and Longitudinal Profile.
- Substrate distribution analysis (Pebble Counts)
- Bank Erosion Hazard Index (BEHI) Assessment
- Rosgen/Pfankuch Bank Stability Index
- Near-Bank Stress (NBS) Assessment

The ultimate goal of the physical stream assessment is to collect quantifiable data from the project reach that best defines the current physical characteristics, processes, and channel dynamics contributing to the impairments that led to failure of the left bank and subsequent collapse of the sewer line. This data will be used in the development of hydraulic and sediment transport models which will in turn inform the preparation of feasible and sustainable channel restoration / remediation measures. These measures will be directly intended to reverse the currently impaired condition of the project reach, restoring stable channel form and function, and providing long-term protection to properties and infrastructure currently threatened by the morphologically-impaired condition of these stream reaches.

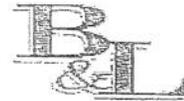
Because they employ methodologies that quantify physical characteristics of the stream banks and channel through the project reach, the methods proposed will provide data that can be used to define a baseline against which the results of implemented restoration activities (constructed stabilization / restoration project) can be measured.

Phase 2 Deliverables:

Draft Engineering Report

Utilizing the information collected during the previous phases of the project, B&L will revise the previously prepared preliminary engineering report summarizing our investigation, including reviewing the various alternatives and provide recommendations to rehabilitate the sections of the sewage collection system identified above. The report will include a summary of the sewer CCTV & manhole inspections to be completed and provided to the City. The Sewer will be located utilizing GPS and the sewer will be overlaid on an Aerial Photo. Report will provide specific scope items which should be included in the final rehabilitation project, present opinion of probable costs, preliminary layout of the proposed facilities and provide a schedule for completing the work. The GPS points will be provided to the City in order to update the sewer data set.

Upon completion of the data collection effort, B&L will provide the City with a separate detailed stream assessment report. The report will include a discussion of the findings of the stream assessment effort at the project reach. Specifically, the stream assessment component of the report will discuss general stream corridor background and conditions, historical condition and character of channel geomorphology, impacts to channel form and function as a



result of land use activities, current physical characteristics of the stream channel and adjacent riparian corridor / floodplain that are contributing to ongoing issues, and application of the data in quantifying extent and rates of stream channel instability and departure from stable form, bed and bank erosion, and channel destabilization.

The Stream Assessment Report will be accompanied by a detailed map that includes the site-specific information collected during the topographic survey (above ground and underground structures and infrastructure, topography of the site at one-foot contour intervals, project area boundaries, land parcel ownership, and notable landscape features including historical and archaeological resources) as well as existing adjacent land uses, soils, resource features, and photo documentation reference points.

A Dam Evaluation Report will include the hydraulic and hydrological review of the reach as it pertains to Holden Dam. This preliminary evaluation will include the hydraulic impact (benefit or detriment) of the removal of the dam to downstream reach. No engineering evaluation or sediment analysis would be done at this time; this report will define the benefits/detriments to the dam on the reach as it relates to the schematic designs to be developed later. This report will be of sufficient detail so as the City can provide us with its determination of whether to continue with the removal of the dam, or proceed without removal of the dam from the remainder of the project.

Phase 3 – Schematic Designs:

Development of a sustainable, long-term solution aimed at remediating impaired channel morphology, restoring stable channel form and function, and protecting the adjacent sewer line at the reach-scale requires a synergy between addressing the root causes of the problem and rehabilitation of those areas that have been negatively impacted as a result (including stabilization of the repaired left bank downstream of the dam).

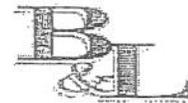
While traditional means of addressing localized and often isolated areas of impaired channel morphology (such as hard-armoring of degrading streambed areas, eroding stream banks, etc.) may have some short-term benefit in some applications, the effectiveness of this stand-alone approach is limited because it does not address the root causes of the problem, and as such these approaches typically require frequent and costly maintenance to provide a measure of protection against future bank failures. A more holistic-scale approach, which considers channel form and process and provides a means for addressing stream bank and channel instability issues by rectifying root causes, provides a means for implementing a more sustainable project with greater benefits over the long-term.

Following the data collection effort, B&L will develop a minimum of two feasible conceptual-level design alternatives for the reach. Development of alternatives for each reach will focus on potential restoration / remediation measures that emphasize addressing root process and causes of the existing morphologically-impaired condition, provide long-term protection for adjacent stream banks and infrastructure, and embrace natural fluvial process and existing natural conditions to the extent possible to provide long-term sustainability of the implemented design.

Our proposed alternatives for restoration / remediation will focus on in-stream structural measures, including natural channel restoration, stream bank stabilization, bioengineering, or other constructed measures intended to reestablish stable channel function, provide long-term protection for adjacent properties and infrastructure, and embrace natural fluvial process to address root causes.

Phase 3 Deliverables:

Upon preparation of conceptual-level schematic designs, B&L will deliver to the City a Conceptual Alternatives Design - Analysis and Recommendations report. This report will include a minimum of two schematic conceptual-level design alternatives for the reach of the creek. The report will also include an alternatives analysis, by which each of the alternatives proposed for the reach will be described in terms of criteria construction cost, longevity, constructability, confidence of regulatory approval, improvements to natural resources and habitats associated with the project reach, compatibility with existing land uses and infrastructure, etc. Based on an evaluation of these and other criteria, B&L will provide an initial recommendation supporting one or more of the proposed alternatives as a preliminary recommended alternative for each given reach.



Phase 4 – Review of Schematic Designs and Selection of Preferred Alternative:

Following review of the schematic designs and the Conceptual Alternatives Design - Analysis and Recommendations report by the City, including evaluation of an alternative removal of the Holden Dam, B&L will meet with the City to review the proposed alternatives and recommendations. B&L will provide guidance and assistance to the City in selection of a preferred alternative to be progressed to final design, permitting, and construction.

Phase 4 Deliverables:

B&L will meet with the City for the purpose of reviewing proposed alternatives for the project reach and provide guidance and assistance in selection of a Preferred Alternative.

Phase 5 – Construction Requirement Analysis (Permit Pre-application Meeting):

B&L will identify vested regulatory entities (local, state, and federal), and prepare a written synopsis of the preferred alternative (selected design) for the project reach. The synopsis will include discussion of required permits necessary to obtain to satisfy the regulatory mandates of each vested regulatory entity, and means by which the selected design satisfies the regulatory requirements of each. It is anticipated that much of the work designed for these reaches can be authorized by state and federal regulations under a NY State Department of Environmental Conservation (NYSDEC) / US Army Corps of Engineers (USACE) Joint Individual Permit.

It is anticipated that in addition to review of the proposed constructed components of the design, these meetings will offer an opportunity to identify with regulatory agencies any key natural resources or habitats to be protected as part of the project, as well as any construction sequencing (timing) concerns related to life cycles of aquatic species associated with Quassaick Creek and its connectivity to the Hudson River Estuary.

Phase 5 Deliverables:

B&L will prepare a written synopsis of the final design, as described above. B&L will arrange, attend, and facilitate two onsite pre-application meetings. These meetings will include representatives of B&L, the City, vested regulatory stakeholders, and any other project partners as deemed appropriate by the City (Orange County Water Authority, etc.). B&L will, subsequent to these pre-application meetings, prepare a summary memorandum recording pertinent aspects of each meeting. B&L will also identify and account for all design modifications necessary to satisfy the comments and concerns of the regulatory stakeholders, and incorporate these modifications into the development of final designs.

Phase 6 – Environmental Quality Review & Environmental Justice:

The State Environmental Quality Review Act (SEQRA), as set forth in Article 8 of the New York State Environmental Conservation Law, establishes a process for the consideration of environmental factors in the planning stages of discretionary actions that are directly undertaken, funded or approved by local, regional and state agencies. SEQRA requires the approving or sponsoring entity to identify and mitigate any significant adverse environmental impacts of the activity it is proposing, funding or permitting. Although SEQRA has been completed for the emergency work, B&L will develop and submit all documents necessary to comply with SEQRA through determination of significance as the full project scope is defined. This includes support for establishment of Lead Agency, identification of interested and involved agencies and preparation of SEQRA Environmental Assessment Forms to determine significance. It is anticipated that this will be classified as an unlisted action. If one or more significant adverse impacts on the environment are identified and a positive declaration is issued, B&L will assist the City with SEQRA as an additional service through a separate authorization.





Threatened and Endangered Species

B&L will contact NYSDEC for identification of any threatened or endangered species as part of the SEQRA process. Their previous correspondence indicated No Jurisdiction, B&L Will confirm that with the extent of work proposed this remains the case.

Archeologically Sensitive Area

B&L will also contact NYSOPRHP for a determination of impacts. Their previous correspondence based upon the scope of work indicated No Impacts, B&L will confirm with the extent of work that this remains the case. B&L will arrange for the performance of a Phase IA Literature Review and Sensitivity Assessment for the proposed project. Pending the results of the Phase IA report, Phase IB site investigation services may be required. It is anticipated that a Phase IA and Phase IB will need to be conducted and the costs for these have been included in this proposal, should it be determined they are not required, we will not invoice for these services.

Wetland Delineation

Under the conditions of the Army Corps of Engineers (ACOE) Nationwide Permit for utility line activities, a delineation of any wetland areas along the project corridors will be required to assist in proper site design and provide necessary information for subsequent permitting efforts. A routine onsite delineation as specified in the 1987 Army Corps of Engineers (USACOE) Wetland Delineation Manual will be performed; to establish the wetland boundaries in the field. A delineation report will be produced summarizing the delineation activities and providing site plans with the wetland areas located on them. As it is anticipated that any impacts to wetlands will be temporary in nature, mitigation design is not anticipated, nor included in this proposal. If it is determined that mitigation design will be necessary, B&L can assist with these as additional service through a subsequent authorization.

Environmental Justice Area

The designated project area is also located within a Potential Environmental Justice (EJ) area within the City of Newburgh, as identified by NYSDEC Environmental Justice Policy CP-29. Environmental justice efforts focus on improving the environment in communities, specifically minority and low-income communities, and addressing disproportionate adverse environmental impacts that may exist in those communities. Consistent with NYSDEC policy, B&L will prepare a Public Participation Plan, and will assist the City in generating public information materials, attending up to four (4) public meetings, and coordinating with NYSDEC regarding Environmental Justice considerations during review and approval of permit applications, as necessitated by the Environmental Justice Policy.

Phase 6 Deliverables:

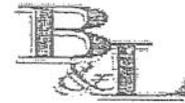
This project is anticipated to be an unlisted action under SEQRA and is not anticipated to require a coordinated review. B&L will prepare documents and support information to submit to the City of Newburgh to advance SEQRA to the point of determination of significance. This includes information for a declaration of intent to serve as Lead Agency (City of Newburgh), a list identifying involved and interested agencies, and completed Environmental Assessment Forms with associated figures/documentation as needed to make a determination of significance relative to the environmental impacts of the proposed project.

B&L will also prepare a Public Participation Plan, generate public information materials, attending public meetings, and coordinate with NYSDEC regarding Environmental Justice policy.

Phase 7 – Draft Final Design:

SPDES NOI & SWPPP

It is assumed the Sewer Cleaning & Lining portion of the project will temporarily disturb less than one acre, therefore a SPDES NOI and SWPPP is not required for this portion of the work. However, it will be required for the much larger stream restoration/revetment disturbance and clearing along the sewer right of way.



Following selection of the preferred alternatives for the Sewer Trunk Repair and the Stream Restoration for the project reach (Phase 4), B&L will prepare a draft final design package. The draft final design will be fundamentally supported by the components of the conceptual alternative. Subsequent refinement of the final design will occur as input from various sources is collected (including regulatory agencies, etc.). Final refinement of the draft final designs will consist of modifications subsequent to review meetings with the City and pre-application meetings with vested regulators.

Upon substantial completion of initial draft final designs, B&L will provide design documentation to the City for review and comment. Subsequent minor revision of the draft final designs will be made to account for any modifications requested as a result of this and subsequent reviews.

Phase 7 Deliverables:

B&L will develop a draft final design for the project reach, and will deliver a draft final design package to the City for review and comment. The draft final design package will include the following:

- Overview mapping, showing project location, boundaries, and general site conditions
- Detailed plan drawings, including existing and proposed (design) features, contours, profiles, existing and target elevations, properties, buildings, infrastructure, planting treatment areas, etc.
- A SWPPP plan for the stream stabilization project
- All construction components necessary to comply with the SWPPP, including construction access, temporary runoff/ erosion and sedimentation control BMPs, material and equipment staging areas, pump-around or temporary stream diversion channels, etc.
- Notations regarding special conditions, construction sequence, etc.
- Comprehensive draft specifications book for all constructed components of the design, site stabilization, and riparian buffer reestablishment (seeding and planting, etc)
- Construction details for all temporary and permanent constructed components of the design
- Detailed planting plan, including a species schedule and details for installation
- Point-file coordinates for accurate field-layout of constructed features, particularly in stream structures (cross vanes, j-hooks, etc.)

Phase 8 – Final Design and Construction Documents:

B&L will prepare design plans, technical specifications, and an itemized opinion of probable construction cost for the various rehabilitation of the sewer system. The design will be in general conformance with the New York State Department of Environmental Conservation (NYSDEC) design standards as defined in "Recommended Standards for Wastewater Works", except any variations approved by NYSDEC. Plan and profile of the sewer improvements, sewer system details, maintenance and protection of traffic, soil erosion and sediment control details and restoration details will be provided. B&L's standard boiler plate bidding documents, construction contract, general conditions and requirements will be included. Plans will be in the version 10 of AutoCAD.

Upon City review of the draft final design, B&L will prepare a final design package for stabilization of the project reach. The final design will consist of the components of the draft final design, modified as required to satisfy the comments of the City following their review. B&L will prepare and submit final designs at a date sufficient to allow a minimum of two weeks for review by the City, to allow for any final comment and revision to be completed prior to attachment of the final plans to the required permit applications.

Subsequent to submittal of permit applications, B&L will work in close concert with the City to satisfactorily address any minor comments from regulatory agencies regarding contents of the submitted design package.



Phase 8 Deliverables:

B&L will develop final designs for the project reach, including plans, specifications, and details specific to the stream stabilization project and the sewer rehabilitation project. B&L will deliver a final design package to the City for review and comment a minimum of two weeks prior to the permit application date.

All final design components will be sealed by a professional engineer licensed in the State of New York.

Phase 9 – Permitting:

B&L will prepare Contract Drawings for submission to and approval by NYSEFC. B&L will also prepare and coordinate with CSX for access across the rail. Being that this is a maintenance project no other permits or approvals are anticipated to be required, however we will provide copies to NYSDEC for use in coordinating Long Term Control Plan compliance oversight.

B&L will engage with regulatory entities initially as described in Phase 5 to review the preferred alternative design and identify applicable regulations and permits. Once all required permits and approvals are identified, pre-application meetings will be conducted with appropriate federal, state and local regulatory staff to confirm regulatory requirements, provide opportunities for regulatory input, and to identify possible opportunities to streamline reviews and approvals. Continued correspondence with regulatory staff will be maintained to help ensure timeliness of all necessary permits and approvals.

It is anticipated the potential permits will include federal, state and local reviews including U.S. Fish and Wildlife Service clearance for work in streams and coordination with State Historic Preservation Office may be necessary if any of the selected designs potentially impacts sites of historic or archaeological significance. Each project will be reviewed in accordance with 6 NYCRR Part 502, *Floodplain Management Criteria for State Projects* and any necessary permits or certifications for compliance with local floodplain management regulations will be obtained. All permit applications will be submitted to the City for review prior to submittal to the regulatory agencies. It is assumed that the all permit fees, if required, will be paid by the City.

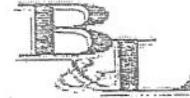
Phase 9 Deliverables:

B&L will provide a complete list of permits and approvals required for the preferred alternative design, coordinate pre-application reviews with appropriate regulatory staff, develop full and complete permit applications, and provide necessary response and follow up to allow the City to secure required permits and approvals.

Phase 10 – Bidding Services:

B&L will prepare an Advertisement for Bid for publication by the City in its official newspaper as well as post it online. B&L will notify potential bidders of advertisement publication and assist with Contract Document distribution. B&L will address contractor questions during the bid phase and prepare responses as appropriate including preparing addenda as required and issuing the same to contractors. B&L will attend the pre-bid meeting at the work site. B&L will also attend the bid opening and tabulate the bids, review the qualifications of the low bidders and prepare a recommendation of award to the City.

For the purposes of bidding, it is assumed that two contracts will be let, the stream restoration contract will be separated from the trunk sewer rehabilitation contract. Three (3) paper copies of the Contract Documents for each will be provided to the City. It is assumed that the Bidders will obtain the Documents through the Empire State Bidding Website or through electronic media. Ten (10) CD's for each contract will be provided to the City for those contractor's whom are unable to obtain them through the digital means. Additional sets can be provided at cost upon request by the City.



Successful implementation of typical channel restoration / remediation designs requires onsite construction oversight by a qualified, experienced stream specialist familiar with channel restoration concepts and methodologies, as well as with the details of the particular components of the particular site design. B&L staff have worked closely with clients, contractors, and regulators on many channel restoration projects, providing detailed onsite construction supervision to meet the special conditions of the permits, and to ensure accurate implementation of the stream restoration design, provide recommendations for necessary field modifications, and ultimately deliver a completed project that adheres to design standards and provides sustainable, long-term channel and stream bank stability. Because the longevity of the repaired sewer line is dependent upon the success and longevity of the affiliated stream stabilization work, it is critical that sufficient oversight be provided to maximize the effective implementation of the stabilization design plan to the greatest extent possible. Many of the techniques typically applied in these projects consist of components that must be matched to the localized, site-specific conditions in order to maximize their effectiveness.

The B&L stream specialist onsite will complete daily logs documenting project status, work completed, any issues or complication encountered during the course of construction, etc. These logs will be submitted to the City via email on a weekly basis for review and, if necessary, consultation with the stream specialist on site to resolve any complicating issues. Submittal of weekly logs will be accompanied by site photographs of the week's activities, over time creating a photo-documentation spanning the life of project implementation at the site, from pre-construction condition to finished, post-construction condition.

Phase 12 – Project Completion:

Upon completion of construction activities of the project, including contractor demobilization and full stabilization of the site in accordance with the SWPPP, B&L will prepare a project completion document to close-out work along the project corridor. The project completion document will include a description of all measures of work completed, for the sewer, stream, and maintenance access including conformance of the overall project to the design standards and construction thresholds, detailed discussion of any field modifications enacted and justification for each (including consistency with the overall design concept), consistency with construction timeline, and compliance with permit conditions (including plantings, site stabilization, etc.). Project completion documents will also include record drawings of the completed project. Record drawings will include location and mapping of the project area, identifying locations and elevations of constructed features, post-construction elevations where available, planting areas, and locations and elevations of set monument pins (required for collection of post-construction monitoring data).

Each Project Completion Document will be sealed by a professional engineer licensed in the State of New York. As-built surveys for each completed project reach conducted by New York Licensed Surveyor are not included. Should an as-built survey be necessary, B&L will subcontract as an additional service under a separate authorization.

Phase 12 Deliverables:

B&L will provide the City with a Project Completion Document following the close-out of construction work along the project corridor, as described above. Submittal will consist of one electronic copy and three hard- (paper) copies of each Project Completion Document. This document will include record drawings of the stabilized stream corridor.

Phase 13 – Project Reporting:

B&L will provide the City with monthly status reports through the life of the contract period, beginning with the month in which the contract for this project is awarded. Each monthly status update will consist of a memorandum highlighting project activities, status of the project at the end of each month, achieved and upcoming/next milestones, and current monthly adherence to the overall project schedule.

RESOLUTION NO.: 140- 2013

OF

JULY 15, 2013

**RESOLUTION AMENDING RESOLUTION NO: 223-2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER THE POSITIONS OF PARKING ENFORCEMENT OFFICERS
FROM THE ON-STREET PARKING DEPARTMENT
AND TO RE-APPROPRIATE THE REMAINING BUDGET BALANCES
TO THE PARKING VIOLATIONS BUREAU DEPARTMENT**

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

		<u>Decrease</u>	<u>Increase</u>
A.1330	Tax Collector		
.0448	NYS DMV Fees	\$ 766.00	
.0448.0003	COMPLUS Software	\$ 37,142.52	
A.3320	On-Street Parking		
.0101	Salary	\$ 38,003.01	
.0102	Part-Time	\$ 15,868.00	
.0103	Overtime	\$ 68.92	
.0411	Oper of Motor Vehicles	\$ 2,400.00	
.0415	Maintenance & Supplies	\$ 1,500.00	
.0417	Uniforms	\$ 592.50	
.0442	Repairs/Motor Vehicles	\$ 1,450.00	
.0810	State Retirement	\$ 16,270.00	
.0830	Social Security	\$ 4,267.35	
.0835	MTA Tax	\$ 189.46	
.0860	Health Insurance	\$ 16,530.64	
.0880	Employee Benefit	\$ 1,175.44	
A.1130	Parking Violations Bureau		
.0101	Salary		\$ 38,003.01
.0102	Part-Time		\$ 15,868.00

.0103	Overtime	\$ 68.92
.0411	Oper of Motor Vehicles	\$ 2,400.00
	<u>Decrease</u>	<u>Increase</u>
A.1130	Parking Violations Bureau	
.0415	Maintenance & Supplies	\$ 1,500.00
.0417	Uniforms	\$
592.50		
.0442	Repairs/Motor Vehicles	\$ 1,450.00
.0448.0002	NYS DMV Fees	\$ 766.00
.0448.0003	COMPLUS Software	\$ 37,142.52
.0810	State Retirement	\$ 16,270.00
.0830	Social Security	\$ 4,267.35
.0835	MTA Tax	\$ 189.46
.0860	Health Insurance	\$ 16,530.64
.0880	Employee Benefit	\$ 1,175.44

Councilman Dillard stated that he is concerned about the changing of these positions, as parking enforcement presently falls under DPW. Also he asked if the mechanics have been worked out because the equipment is still at the garage. He suggested that we try it for three months. If it does not work out, then we may have to come up with something different.

The interim city manager clarified that the salaries and the positions would remain the same, and it does not affect the current operation. It simply centralizes the operation into one location. He explained that they will continue to go to DPW to pick up the equipment before they start their daily rounds. There should not be any issues in terms of the department's operations. We are in the process of procuring another vehicle for staff's use. We are trying to maximize efficiency with the existing staff that we have. The department is doing an excellent job in terms of production and revenue.

Mayor Kennedy stated that the idea of this is to get everything under one head. Streamlining it makes sense. She stated that we would want to check the efficiency of it.

Councilman Brown stated that he read in the Charter that these positions fall under the police department. Is the resolution efficient to support the changes?

Corporation Counsel Michelle Kelson explained that the parking enforcement officers had previously been under the auspices of the police department. They had previously been transferred, through budget transfers, to DPW. Now that we have an actual Parking Violations Bureau, we are trying to consolidate all parking-related operations and services into one centralized location. She assured Councilman Brown that the resolution is efficient to support the changes.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

ORDINANCE NO.: 7 - 2013

OF

JULY 15, 2013

AN ORDINANCE AMENDING SECTION 163 -2 ENTITLED “MISCELLANEOUS FEES” OF THE CODE OF THE CITY OF NEWBURGH

BE IT ORDAINED by the City Council of the City of Newburgh that:

Section 1. Section 163-2 entitled “Miscellaneous Fees” of the Code of the City of Newburgh be and hereby is amended as follows:

Type of Fee	Amount
Civil Service examination fees	
Application for any civil service open competitive exams for the position of police officer or fire fighter for which the New York State Department of Civil Service has provided the examination and rated the candidates	\$40.00 <u>50.00</u>

Section 2. This ordinance shall take effect immediately.

Councilwoman Angelo moved and Councilwoman Lee seconded that the ordinance be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 143- 2013

OF

JULY 15, 2013

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO ENTER INTO AN AGREEMENT WITH C.T. MALE ASSOCIATES, P.C. FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO DAM SAFETY FOR SILVER STREAM RESERVOIR DAM AND WASHINGTON LAKE DAM AND AMENDING RESOLUTION NO: 223-2012, THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK

WHEREAS, by Resolution No. 124-2012 of July 16, 2012, the City Council of the City of Newburgh authorized the City Manager to enter into a Master Services Agreement with C.T. Male Associates, P.C. to provide dam inspection and safety related engineering services; and

WHEREAS, pursuant to the Master Services Agreement, C.T. Male Associates, P.C. has submitted a proposal to provide a Visual Inspection and Safety Inspection Report for the Silver Stream Dam and to provide a Visual Inspection, Safety Inspection Report, Inspection and Maintenance Plan and an Engineering Assessment for the Washington Lake Dam, which represents work items necessary to comply with New York State Department of Environmental Conservation Reporting Requirements and the Engineering Assessment of known deficiencies at the Washing Lake Dam and related spill way; and

WHEREAS, the cost for such dam safety services shall be in an amount not to exceed Forty-Three Thousand Sixty and 00/100 (\$43,060.00) Dollars; and

WHEREAS, funding for such project shall be derived from F.8320.0448.1-Dam Safety Services; and

WHEREAS, this Council has determined that entering into an agreement with C. T. Male Associates, P.C. is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager is hereby authorized to enter into an agreement with C.T. Male Associates, P.C. for professional engineering services related to dam safety for the Silver Stream Reservoir Dam and the Washington Lake Dam in an amount not to exceed Forty-Three Thousand Sixty and 00/100 (\$43,060.00) Dollars;

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

<u>Increase</u>	<u>Decrease</u>
Water Fund	
F.1900.1990	
Contingency	\$27,500.00
 Water Fund	
F.8320.0448.1	
Dam Safety Services	
\$27,500.00	

Councilman Dillard asked if the council had seen the bid for this. He has voiced his opinion concerning this particular engineering firm for years. In the future could we get a list of firms from which we could choose? We are making this firm rich.

Kelson explained that it is an agreement for professional services, so it did not go out as a bid. This is for safety inspections and identifying a plan to ensure that the dams are up to State regulations. The actual construction work would be appropriated for bid. The council approved the Master Services agreement with this firm a couple of years ago, with other appropriations as services were required. This is another service required in order to comply with DEC regulations.

James Slaughter stated that the policy needs to be updated. There are a lot of engineering firms out there. We will work on it with staff and look toward wider scopes as we go through our professional services and bidding process. The familiarity in terms of some of these issues is one of the reasons this firm has been used. We will take a look at the procurement process and update our policies. That is a part of us taking a big-picture look at the way we do business in the city.

Mayor Kennedy stated that it would be a good idea to have a whole criteria set for all of these projects that evaluates how the firms are performing, what the cost ratios are, and how they perform to timelines so that we can make better decisions.

Councilwoman Angelo moved and Councilman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

143-13

C.T. MALE ASSOCIATES

50 Century Hill Drive, Latham, NY 12110
518.786.7400 FAX 518.786.7299 www.ctmale.com



June 18, 2013

Mr. Craig Marti, P.E.
City Engineer
City of Newburgh
83 Broadway
Newburgh, NY 12250

Re: *Proposal to Provide Dam Engineering Services
Silver Stream Reservoir Dam (DEC #195-0531) &
Washington Lake Dam (DEC #195-0536)
Newburgh, NY*

Dear Mr. Marti:

C.T. Male Associates is pleased to present this proposal to provide engineering services for the two dams referenced above. Prior to preparing this proposal, we reviewed files maintained by New York State Department of Environmental Conservation (DEC) for the two dams and have communicated with Mr. Scott Braymer of Dam Safety regarding the engineering work presently required for each. For Silver Lake Dam which has recently been reconstructed, only a Safety Inspection is currently required. For Washington Lake Dam, an Inspection & Maintenance Plan, Safety Inspection and Engineering Assessment need to be prepared/performed.

Descriptions of the work involved in the preparation of these plans/reports are summarized below.

Inspection & Maintenance Plans

The Inspection & Maintenance Plan (IMP) we propose to prepare for Washington Lake Dam will comply with the requirements of 6 NYCRR Part 673.6. It will be prepared in the format presented on the "Template for an Inspection and Maintenance Plan for Dams" prepared by DEC. We will expand upon this format utilizing reporting forms we have developed in-house from a variety of guidance documents.

The work involved in the preparation of this plan will involve the following tasks:

- Files maintained by DEC will be reviewed. Copies will be made of any as-built (historical) drawings of the dam and of the inspection reports prepared by DEC.
- A site visit will be made to inspect the dam, document and photograph its existing condition, and measure the size and configuration of its spillway.
- A limited field survey will be performed to determine the spillway crest elevation, the type and size of culverts/bridges downstream of the dam, and the relative elevations of these structures and the roadways or driveways crossing over the same.
- Operation procedures for the dam will be reviewed and included on our inspection report form.

CONTRACT AGREEMENT

Project No.: _____

Agreement made this 19th day of June 2013, 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); and CITY OF NEWBURGH (hereinafter called the CLIENT).

CLIENT and C.T. MALE agree as follows:

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

A.1 The CLIENT intends to have performed Safety Inspections of Silver Stream Dam and Washington Lake Dam performed and an Inspection & Maintenance Plan and Engineering Assessment prepared for Washington Lake Dam. Both dams are owned by the City of Newburgh.

A.2 Scope of Services – The services to be performed by C.T. MALE includes visual inspection of each dam and the conditions directly downstream, the preparation of Safety Inspection Reports for each dam, and the preparation of an Inspection & Maintenance Plan and Engineering Assessment for Washington Lake Dam. The work performed by C.T. Male will comply with the requirements set forth of Part 673 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

A.3 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 and C.T. MALE agree that payments under this contract shall be a lump sum of 43,060.00 as set forth in the fee schedule presented in our proposal dated June 18, 2013.

B.2 All fees and other charges will be billed monthly unless otherwise specified in this agreement or agreed to by both parties. Other expenses, including but not limited to, outside consultants, materials testing, bond premiums, title company charges, application fees, permits, shall be invoiced at cost plus a 10% service fee for handling and administration.

C. CLIENT shall furnish the following:

Access to each dam and any information regarding the dams that the City has on file.

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. The City shall provide C T Male with all available records/information with respect to historical uses of the subject lands. C T Male shall develop any necessary health and safety plans for the protection of their staff.

C.T. MALE ASSOCIATES, P.C.

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:** Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by C.T. MALE to CITY under the terms of this Agreement shall become the property of the CITY, unless otherwise provided for by the parties. As such, CITY, in its sole discretion, shall have the right to use, copy, disseminate and otherwise employ or dispose of such material in any manner as it may decide with no duty of compensation or liability therefore to C.T. MALE or to third parties. C.T. MALE shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such intellectual property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of the CITY's rights regarding same. C.T. MALE agrees to defend, indemnify and hold harmless the CITY for failing to notify CITY of same.
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:** C.T. MALE agrees to defend, indemnify and hold harmless the CITY, 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 CITY or its officials, employees or agents, may suffer by reason of any negligence, error or omission of C.T. MALE, its employees, representatives, subcontractors, assignees, or agents.
8. **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.
9. **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.
10. **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 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.
11. **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.
12. **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 \$100,000.00 or C.T. MALE's total fee for services rendered on the project.
13. **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.

RESOLUTION NO.: 144 - 2013

OF

JULY 15, 2013

A RESOLUTION AUTHORIZING THE AWARD OF A BID AND THE EXECUTION OF A CONTRACT WITH DN TANKS, INC. IN THE AMOUNT OF ONE MILLION NINE HUNDRED EIGHTY THREE THOUSAND SEVEN HUNDRED TWENTY (\$1,983,720.00) DOLLARS FOR THE MARNE AVENUE WATER STORAGE TANK REPLACEMENT PROJECT

WHEREAS, by Resolution No. 252 -2011 of December 12, 2011, the City of Newburgh through a competitive process in which proposals for professional engineering services were solicited, reviewed and evaluated, the City Council authorized the City Manager to execute a contract with Barton and Loguidice, P.C., for professional services in connection with the repair or replacement of the City of Newburgh Water Storage Tanks; and

WHEREAS, two (2) companies were prequalified and invited to submit bids in connection with the Marne Avenue Water Storage Tank Replacement Project; and

WHEREAS, bids have been duly received and opened and it is necessary and appropriate to enter into contracts with the lowest responsible bidder to retain such services; and

WHEREAS, funding for said project in the amount of One Million Nine Hundred Eighty Three Thousand Seven Hundred Twenty (\$1,983,720.00) Dollars and shall be derived from HF1.8340.0200.8300.0000; and

WHEREAS, this Council has determined that awarding the bid and entering into a contract with DN Tanks, Inc. is in the best interests of the City of Newburgh and its further development;

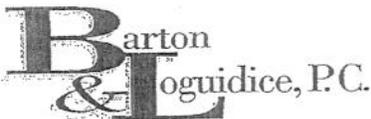
NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the bid for the replacement of the Marne Avenue Water Storage Tank be and is hereby awarded to DN Tanks, Inc., and that the Interim City Manager be and he is hereby authorized to execute a contract to enter into a contract for such work in this amount; and

BE IT FURTHER RESOLVED, that the Interim City Manager be and he is hereby authorized to review and approve project change orders in the amount not to exceed 5% of the contract amount.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED



Celebrating 50 years of service

Engineers • Environmental Scientists • Planners • Landscape Architects
Syracuse • Albany • Rochester • Ellenville • Newburgh • Camp Hill

July 10, 2013

Mr. Craig M. Marti, P.E.
City Engineer
City of Newburgh
83 Broadway
Newburgh, NY 12550

Re: Recommendation for Award
Marne Avenue Water Storage Tank Replacement Project
City of Newburgh, Orange County, New York

File: 1352.002.001

Dear Mr. Marti:

Barton & Loguidice, P.C. (B&L) has reviewed the bids submitted for the referenced project and the certified bid tabulation is attached for your review. Two (2) bids were submitted for this project, DN Tanks, Inc. and Preload, Inc.

Based on our review of the bids submitted and qualifications of the low bidder for the referenced project, B&L recommends the City award the Contract to DN Tanks, Inc. in the amount of \$1,983,720.00. This includes the cost for Additive Bid Item 2, based on an assumed quantity of 50 CY included in Addendum #1. Refer to the attached certified bid tabulation sheet.

Note that DN Tanks bid price of \$1,554,500.00 for the 1.5 MG water storage tank and associated site work (bid item no.1) is lower than B&L's opinion of probable cost of \$1,666,000 provided in the Engineering Memo dated April 25, 2012. The additional \$425,741 in DN Tanks project cost (sum of bid items 2-11) is reflective of the additional work added by Addendum #1. We estimated this Addendum #1 work to be about \$500,000. It is our recommendation that the City award the Contract to DN Tanks, Inc. in the amount of \$1,983,720.00. It is also recommended that the City set aside this Contract amount plus an additional 5% to account for any change orders during construction.

Please call should you have any questions.

Very truly yours,

BARTON & LOGUIDICE, P. C.

Anthony T. Eagan, P.E.
Sr Project Engineer

Attachment
AMK/ojf

Z:\BL-Vault\1 - Project Files\1 - Sorted by Project Number {2} Class {2} Folder\1300\1352.002.001\Construction\Bids\1352.002.001
BID_RecomndLetter.doc

280 Broadway • Suite 12 • Newburgh, New York 12550
Telephone: 845-391-8360 • Facsimile: 845-391-8361 • www.BartonandLoguidice.com

The experience to **listen.**
The power to **solve.**

CITY OF NEWBURGH
 1352.002.001 MARINE AVENUE WATER STORAGE TANK REPLACEMENT
 BID OPENING - 2:00 PM, JULY 9, 2013
 BID TABULATION



Item No.	Description	Estimated Quantities	Unit	Engineer's Estimate		DN Tanks, Inc.		Praload, Inc.	
				Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	1.5 MG Water Storage Tank and associated site work	1	LS	\$1,666,000.00	\$1,666,000.00	\$1,554,500.00	\$1,554,500.00	\$1,988,000.00	\$1,988,000.00
2 a,b	Remove and recompact loose soil in excess of 200 CY	50	CY	--	--	\$71.00	\$3,550.00	\$81.00	\$4,050.00
3 b	Work within Robinson Ave to Extent of Right-of-way	1	LS	--	--	\$103,530.00	\$103,530.00	\$118,800.00	\$118,800.00
4 b	14" Ductile Iron pipe and fittings	540	LF	--	--	\$249.00	\$134,460.00 *	\$285.00	\$153,900.00
5 b	Surface restoration 14" watermain (in pavement)	40	LF	--	--	\$118.00	\$4,720.00	\$135.00	\$5,400.00
6 b	Surface restoration 14" watermain (outside pavement)	360	LF	--	--	\$14.00	\$5,040.00	\$15.00	\$5,400.00
7 b	Sidewalk restoration	145	LF	--	--	\$49.00	\$7,105.00	\$66.00	\$9,620.00
8 b	8" ductile iron pipe and fittings	260	LF	--	--	\$272.00	\$70,720.00	\$312.00	\$81,120.00
9 b	Surface restoration of 8" watermain (in pavement)	150	LF	--	--	\$48.00	\$7,200.00	\$54.00	\$8,100.00
10 b	Surface restoration of 8" watermain (outside pavement)	105	LF	--	--	\$23.00	\$2,415.00	\$26.00	\$2,730.00
11 b	Excavation - Rock	240	CY	--	--	\$377.00	\$90,480.00	\$432.00	\$103,680.00
TOTAL (ITEMS 1-11)					\$1,666,000.00		\$1,983,720.00 ^d		\$2,479,300.00 ^d
IRANIAN ENERGY SECTOR DIVESTMENT NON COLLUSION ATTACHED SURETY BID BOND							Yes Yes Yes 5%		Yes Yes Yes 5%

Table Notes:
 a. For comparison of bids, the cost of Additive Bid Item 2 was tabulated by multiplying the Contractors submitted unit price by an assumed quantity of 50 CY.
 b. Indicates work item added per Addendum #1
 c. Indicates discrepancy in Contractor's Bid price (due to mathematical error) as compared to correct Bid price per line item as shown in the Bid Tabulation above
 d. Total Contract amount based on Bid Items 1-11.

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

BY:

RESOLUTION NO.: 145 - 2013

OF

JULY 15, 2013

**RESOLUTION AMENDING RESOLUTION NO: 223-2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$30,000.00 FROM WATER FUND CONTINGENCY
TO WATER FUND REPAIRS/OTHER EQUIPMENT FOR EMERGENCY
REPAIR TO CHLORINE TANKS**

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

<u>Increase</u>	<u>Decrease</u>
F.1900.1990 Contingency	\$30,000
F.8330.0443 Repairs/Other Equipment \$30,000	

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

Ayes-Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 146 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO EXECUTE AN ORDER ON CONSENT WITH THE
NEW YORK STATE DEPARTMENT OF LABOR TO RESOLVE VIOLATIONS
FOR PROPERTY LOCATED AT ONE LIBERTY STREET**

WHEREAS, the New York State Department of Labor (“NYS DOL”) inspected property located at One Liberty Street in the City of Newburgh on May 7, 2010 and June 5, 2012 and found violations in connection with regulations issued under Article 50 of the NYS Labor Law; and

WHEREAS, the NYS DOL has offered to resolve the violations with the payment of a civil penalty not to exceed \$1,500.00 which is payable upon the signing of an Order on Consent; and

WHEREAS, this Council has determined that entering into an Order on Consent to resolve the violations 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’s attorneys are hereby authorized to resolve the violations against the City of Newburgh with the New York State Department of Labor for a civil penalty not to exceed \$1,500.00 and that Interim City Manager be and he hereby is authorized to execute documents, including an Order on Consent, as the City’s attorney may require, to effectuate the settlement as herein described.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 147 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO ENTER
INTO
A LICENSE AGREEMENT WITH THE YOUTH EMPOWERMENT CENTER FOR
THE FIRST FLOOR OF 104 SOUTH LANDER STREET FOR A TERM OF ONE
YEAR**

WHEREAS, the Youth Empowerment Center (YEC) has expressed an interest in using the first floor of the building located at 104 South Lander Street to establish a location for providing youth programs and services; and

WHEREAS, allowing the YEC to use the first floor of the building located at 104 South Lander street will require a license agreement which the term of said license shall be one year and which may automatically renew for successive one year terms unless terminated as set forth in the license agreement, a copy of which is annexed hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license agreement and finds that entering into the same would be in the best interests of the City of Newburgh and the community alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to execute the attached license agreement with the Youth Empowerment Center for the use of the first floor of 104 South Lander Street in substantially the same form and on the terms and conditions contained in the attached license agreement, including such other terms and conditions as may be deemed appropriate and necessary by the Interim City Manager and /or the Corporation Counsel in order to carry-out the subject transaction.

Councilwoman Lee suggested that the council table the resolution. She needs more information about the hours of operation, financing and staffing. The group will be working with at-risk youth and other children will be there too.

Councilwoman Angelo stated that we are only allocating \$5K. She does not know if the organization is going to be able to operate on that amount.

Mayor Kennedy stated that we are halfway in the middle of the summer already. While this is just a small stipend to get them started, the group has been working very hard raising funds. While we may not have the answer for the entire community, they are working hard toward an answer for a given set of children and young adults. We need to give them a chance and we do not need to stall on this further.

Councilwoman Lee stated that we had the same options open for our local veterans and it was not a go. She allowed the veterans to use her office space. They were never treated like they were welcomed there. They still need a place. We can not set a precedent for giving leases to organizations. Otherwise we are going to be giving everyone a lease. Let's just take a step back and look at what we are doing.

Councilman Dillard stated that he needed further information. He would like Pastor Austin to work with the interim city manager to clear up some of the confusion. There is some confusion about the utilities, the upkeep and maintenance, and the amount of money that is being allocated. He pointed out that we will be ready to vote on this at the next council meeting.

Councilwoman Lee moved and Councilwoman Angelo seconded that the resolution be *tabled*.

Ayes- Councilwoman Angelo, Councilman Dillard, Councilwoman Lee-3

Noes- Councilman Brown, Mayor Kennedy-2

TABLED

LICENSE AGREEMENT

This Agreement made this _____ day of _____ 2013, between the CITY OF NEWBURGH, a municipal corporation having its principal offices at City Hall, 83 Broadway, Newburgh, NY 12550 (hereinafter referred to as "LICENSOR" or "CITY) and YOUTH EMPOWERMENT CENTER, a corporation organized and existing under the laws of the State of New York, having its principal place of business at _____, Newburgh NY 12550 (herein referred to as "LICENSEE" or "YEC").

WITNESSETH:

WHEREAS, LICENSOR owns property located at 104 South Lander Street, Newburgh, New York, hereinafter referred to as the "PREMISES"; and

WHEREAS, LICENSEE desires the license or privilege of gaining access to the first floor of the Premises for the purpose of establishing a community center for youth programs and services; and

WHEREAS, LICENSOR is willing to give said license or privilege on the following terms and conditions:

NOW THEREFORE, in pursuance of said agreement and in consideration of ONE AND NO/100 (\$1.00) DOLLAR paid by each of said parties to each other, receipt of which is hereby acknowledged and of the mutual covenant, agreements, conditions, and stipulations herein contained, it is mutually covenanted, stipulated and agreed by and between the parties hereto as follows:

1. PREMISES:

LICENSOR does hereby grant unto LICENSEE use and occupancy of the first floor of the Premises for the purpose of establishing a community center for youth programs and services according to the terms and conditions as hereinafter provided.

2. TERM:

The license granted hereunder shall be for a term of one (1) year, commencing upon the date this Agreement shall be properly executed by both parties, unless earlier terminated by either or both parties as provided herein.

3. CONSIDERATION:

The consideration shall be ONE AND No/100 (1.00) DOLLAR payable by each party to the other upon execution of this License Agreement, and all such other covenants, promises and understandings provided herein.

4. LIABILITY/INSURANCE:

A. LICENSOR and LICENSEE each agree to be responsible for the negligent or wrongful acts or omissions of their respective employees arising under this agreement. The parties agree to cooperate in good faith to resolve any claims promptly and wherever appropriate without litigation.

B. LICENSOR and LICENSEE shall at all times during the term of this Agreement maintain and keep in force comprehensive general liability insurance. LICENSEE shall provide to LICENSOR a copy of the certificate of said general liability insurance. LICENSOR shall at all times during the term of this Agreement maintain and keep in force property and casualty insurance covering the Premises.

5. USE AND OCCUPANCY:

LICENSEE shall use and occupy the Premises in a careful, safe and proper manner, and shall not occupy or use said premises or permit the same to be occupied or used for any purpose or business which is unlawful and shall comply with all lawful requirements of all current laws, ordinances, rules and regulations of all governmental authorities pertaining to the use and occupancy of the Premises and according to the following conditions:

- a. Licensee's access to the Premises shall be Thursday, Friday and Saturday each week from 1:00 pm until 1:00 am.
- b. Licensee may provide youth programs on Thursday, Friday and Saturday each week from 3:00 pm to 12:00 am. However, no program for teenage youth may begin before 5:00 pm on Thursday and Friday.
- c. Licensee shall provide its own security.

LICENSOR shall notify LICENSEE when other organizations are scheduled for the approved use of the PREMISES.

6. IMPROVEMENT AND MAINTENANCE:

- A. LICENSOR shall maintain the Premises in good repair and conditions, supply utilities including heat, air conditioning, light, ventilation, sanitation, trash removal during the period of this Agreement.
- B. LICENSOR shall install a gate or door at the top of the stairs between the first and second floors; shall provide LICENSEE with two (2) keys to the front door of the PREMISES and a code to the security alarm; and shall permit LICENSEE to store items and supplies in the rear closet.
- C. LICENSEE may provide office furniture and equipment necessary and proper for the intended use of the Premises and may make other minor alterations to the Premises which shall be removed upon the termination of this Agreement.
- D. LICENSEE shall maintain the Premises in a clean and orderly condition; shall provide their own clean up service; surrender the Premises in the same state and condition as it was at the commencement of LICENSEE's use and occupancy.
- E. LICENSEE may install a new lock to the rear closet; may install a new thirty (30") inch electric stove, which shall become a fixture remaining with the Premises after the expiration of this Agreement; and may paint the interior walls subject to the approval of LICENSOR as to color.

7. ADDRESSEES FOR PURPOSES OF NOTICE:

All notices, requests, demands, approvals or other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when delivered by hand or sent by registered or certified mail, return receipt requested, addressed as follows:

If to City:

City of Newburgh
83 Broadway
Newburgh, NY 12550
Attn: City Manager

With copies to: City of Newburgh
83 Broadway
Newburgh, NY 12550
Attn: Corporation Counsel

If to YEC: Youth Empowerment Center

Newburgh, NY 12550
Attn:

With copies to:

Attn:

8. 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.

9. NON-ASSIGNMENT:

LICENSEE shall not have the right to assign this Agreement without prior written approval of LICENSOR.

10. INVALIDITY OF PROVISIONS:

If any term or provision of this Easement Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Easement Agreement, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

12. HEADINGS:

It is understood and agreed that the headings are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Agreement, or in any way affect this Agreement.

13. **ENTIRE AGREEMENT:**

This Agreement contains the entire agreement between the parties and any agreement hereafter made shall be ineffective to change, modify or discharge it in whole or part unless such agreement is in writing and signed by both parties.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have signed this Agreement below.

(date)

CITY OF NEWBURGH, LICENSOR

By: _____
JAMES A. SLAUGHTER
Interim City Manager

(date)

YOUTH EMPOWERMENT CENTER,
LICENSEE

By: _____

RESOLUTION NO.: 148-2013

OF

JULY 15, 2013

**A RESOLUTION APPROVING THE CONSENT JUDGMENT AND
AUTHORIZING THE INTERIM CITY MANAGER TO SIGN SUCH CONSENT
JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDING
AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME
COURT BEARING ORANGE COUNTY INDEX NO. 5795-2012, INVOLVING
SECTION 36 BLOCK 2, LOT 11 (117 LIBERTY STREET, LLC)**

WHEREAS, 117 Liberty Street, LLC has commenced a tax certiorari proceeding against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2012-2013 tax assessment year bearing Orange County Index No. 5795-2012; and

WHEREAS, it appears from the recommendation of the City Assessor, Joanne Majewski, and Richard B. Golden, Esq. of Burke, Miele & Golden, LLP, Special Counsel for the City of Newburgh in the aforesaid proceeding, 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 matter as more fully set forth below is reasonable and in the best interests of the City; and

WHEREAS, 117 Liberty Street, LLC is willing to settle this proceeding without interest, costs or disbursements, in the following manner:

That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 36-2-11 be reduced to a market value of \$ 101,680.

NOW, THEREFORE BE IT RESOLVED, that the proposed settlement as set forth and described above and the attached Consent Judgment is hereby accepted pursuant to the provisions of the General City Law and other related laws.

BE IT FURTHER RESOLVED, that James Slaughter, Interim City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; and Richard B. Golden, Esq. on behalf of Burke, Miele & Golden, LLP, as Special Counsel, be and they

hereby are designated as the persons for the City who shall apply for such approval pursuant to the aforesaid laws.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

SUPREME COURT – STATE OF NEW YORK
COUNTY OF ORANGE

-----x
In the Matter of the Application of
117 LIBERTY STREET, LLC,

Petitioner,

CONSENT

JUDGMENT

- against -

THE ASSESSOR, THE BOARD OF ASSESSORS
AND THE BOARD OF ASSESSMENT REVIEW
OF THE CITY OF NEWBURGH AND THE
CITY OF NEWBURGH,
005795

Index No. 2012-

Respondents.

For review of a Tax Assessment under Article 7
Of the Real Property Tax Law

-----x
PRESENT: HON. CATHERINE M. BARTLETT

UPON THE CONSENT attached hereto duly executed by the attorneys for all the parties and by all the parties, it is

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2012-2013, as follows:

Tax Map No. 36-2-11

be reduced in market value from \$127,100.00, to a market value of \$101,680.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the Petitioner's real property taxes on said parcel above described for the 2012-2013 School, County and City taxes be adjusted accordingly and that any overpayment by Petitioner be refunded upon the entering of this Consent Judgment with the Orange County Clerk's Office; and it is further,

ORDERED, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and

records and upon the assessment roll of said City the entries, changes and corrections necessary to conform such reduced market value; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amount, if any, paid as City taxes and City Special District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the County of Orange, the amounts, if any, paid as County taxes and County Special District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the Newburgh City School District, the amount, if any, paid as School District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be no interest paid or credited in connection with this Consent Judgment; and it is further,

ORDERED, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed: August ____, 2013
Goshen, New York

ENTER:

BARTLETT

HON. CATHERINE M.
SUPREME COURT JUSTICE

ON CONSENT:

HON. JAMES SLAUGHTER
Interim City Manager
Dated:

MICHELE RAMETTA, ESQ.
Attorney for the Petitioner
Dated:

HON. JOANNE MAJEWSKI
Assessor
Dated:

RICHARD B. GOLDEN, ESQ.
Burke, Miele & Golden, LLP
Attorney for Respondents
Dated:

RESOLUTION NO.: 149-2013

OF

JULY 15, 2013

**A RESOLUTION APPROVING THE CONSENT JUDGMENT AND
AUTHORIZING THE INTERIM CITY MANAGER TO SIGN SUCH CONSENT
JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDING
AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME
COURT BEARING ORANGE COUNTY INDEX NO. 5794-2012, INVOLVING
SECTION 24, BLOCK 1, LOT 17 (120 GRAND STREET, LLC)**

WHEREAS, 120 Grand Street, LLC has commenced a tax certiorari proceeding against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2012-2013 tax assessment year bearing Orange County Index No. 5794-2012; and

WHEREAS, it appears from the recommendation of the City Assessor, Joanne Majewski, and Richard B. Golden, Esq. of Burke, Miele & Golden, LLP, Special Counsel for the City of Newburgh in the aforesaid proceeding, 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 matter as more fully set forth below is reasonable and in the best interests of the City; and

WHEREAS, 120 Grand Street, LLC is willing to settle this proceeding without interest, costs or disbursements, in the following manner:

That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 24-1-17 be reduced to a market value of \$ 48,960.00.

NOW, THEREFORE BE IT RESOLVED, that the proposed settlement as set forth and described above and the attached Consent Judgment is hereby accepted pursuant to the provisions of the General City Law and other related laws.

BE IT FURTHER RESOLVED, that James Slaughter, Interim City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; and Richard B. Golden, Esq. on behalf of Burke, Miele & Golden, LLP, as Special Counsel, be and they

hereby are designated as the persons for the City who shall apply for such approval pursuant to the aforesaid laws.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

SUPREME COURT – STATE OF NEW YORK
COUNTY OF ORANGE

-----x
In the Matter of the Application of
120 GRAND STREET, LLC,

Petitioner,

CONSENT

JUDGMENT

- against -

THE ASSESSOR, THE BOARD OF ASSESSORS
AND THE BOARD OF ASSESSMENT REVIEW
OF THE CITY OF NEWBURGH AND THE
CITY OF NEWBURGH,
005794

Index No. 2012-

Respondents.

For review of a Tax Assessment under Article 7
Of the Real Property Tax Law

-----x
PRESENT: HON. CATHERINE M. BARTLETT

UPON THE CONSENT attached hereto duly executed by the attorneys for all
the parties and by all the parties, it is

ORDERED, that the real property of Petitioner described on the City of
Newburgh tax rolls for the tax year 2012-2013, as follows:

Tax Map No. 24-1-17

be reduced in market value from \$61,200.00, to a market value of \$48,960.00, prior to the
application of any real property tax exemptions, if any; and it is further,

ORDERED, that the Petitioner's real property taxes on said parcel above
described for the 2012-2013 School, County and City taxes be adjusted accordingly and
that any overpayment by Petitioner be refunded upon the entering of this Consent
Judgment with the Orange County Clerk's Office; and it is further,

ORDERED, that the officer or officers having custody of the aforesaid City of
Newburgh assessment rolls shall make or cause to be made upon the proper books and

records and upon the assessment roll of said City the entries, changes and corrections necessary to conform such reduced market value; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amount, if any, paid as City taxes and City Special District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the County of Orange, the amounts, if any, paid as County taxes and County Special District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the Newburgh City School District, the amount, if any, paid as School District taxes against the original assessment in excess of what said taxes would have been if the market value had been determined as herein; and it is further,

ORDERED, that there shall be no interest paid or credited in connection with this Consent Judgment; and it is further,

ORDERED, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed: August ____, 2013
Goshen, New York

ENTER:

BARTLETT

HON. CATHERINE M.
SUPREME COURT JUSTICE

ON CONSENT:

HON. JAMES SLAUGHTER
Interim City Manager
Dated:

MICHELE RAMETTA, ESQ.
Attorney for the Petitioner
Dated:

HON. JOANNE MAJEWSKI
Assessor
Dated:

RICHARD B. GOLDEN, ESQ.
Burke, Miele & Golden, LLP
Attorney for Respondents
Dated:

RESOLUTION NO.: 150 - 2013

OF

JULY 15, 2013

A RESOLUTION TO AUTHORIZE THE RE-PURCHASE OF
REAL PROPERTY KNOWN AS 63 GROVE STREET
(SECTION 26, BLOCK 6, LOT 7.1)
AT PRIVATE SALE TO JON F. TURNQUIST

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

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

WHEREAS, Jon F. Turnquist, the former owner of 63 Grove Street, being more accurately described as Section 26, Block 6, Lot 7.1 on the official tax map of the City of Newburgh, has requested to re-purchase the property at private sale; and

WHEREAS, the City Council of the City of Newburgh has determined that it would be in the best interests of the City of Newburgh to allow the former owner to re-purchase this property, without the need for litigation and subject to any liens, encumbrances or mortgages of record that existed against this property at the time the City of Newburgh took title in the tax foreclosure proceeding, provided that all taxes, interest and penalties owed are paid expeditiously;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of 63 Grove Street, Section 26, Block 6, Lot 7.1, to Jon F. Turnquist be and hereby is confirmed and that the Interim City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of all past due tax liens, together with all interest and penalties accruing thereon, and all currently due taxes and charges are paid, in full, for a total amount of \$28,894.79, no later than July 31, 2013; and

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

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 151 - 2013

OF

JULY 15, 2013

A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF
KENNETH BRUNE AGAINST THE CITY OF NEWBURGH
IN THE AMOUNT OF FORTY-FIVE THOUSAND DOLLARS

WHEREAS, Kenneth Brune brought an action against the City of Newburgh; and

WHEREAS, the parties have reached an agreement for the payment of the settlement in the amount of Forty-five Thousand (\$45,000.00) Dollars in exchange for a release to resolve all claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorneys are hereby authorized to settle the claim of Kenneth Brune against the City of Newburgh in the total amount of Forty-five Thousand (\$45,000.00) Dollars and that the Interim City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard,
Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 152 - 2013

OF

JULY 15, 2013

**A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF
JOHN CESTARO AGAINST THE CITY OF NEWBURGH
IN THE AMOUNT OF THREE THOUSAND SIX HUNDRED DOLLARS**

WHEREAS, John Cestaro brought a claim against the City of Newburgh; and

WHEREAS, the parties have reached an agreement for the payment of the settlement of the claim in the amount of Three Thousand Six Hundred (\$3,600.00) Dollars in exchange for a release to resolve all claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorney is hereby authorized to settle the claim of John Cestaro in the total amount of Three Thousand Six Hundred (\$3,600.00) Dollars, and that the Interim City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 153 - 2013

OF

JULY 15, 2013

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE IN REM TAX FORECLOSURE
OF LIENS FOR THE YEAR 2011 RELATIVE TO
18 JAMISON PLACE (SECTION 3, BLOCK 3, LOT 1)**

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2012-001071; and

WHEREAS, Champion Mortgage has advised the City that they are prepared to settle such action; and

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 RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager be and he is hereby authorized to withdraw the lien on the property located at 18 Jamison Place (Section 3, Block 3, Lot 1), in the City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Eleven Thousand Ninety Five And 01/100 (\$11,095.01) Dollars representing 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 2012-2013 school taxes, water charges and sewer charges, are all paid in full by certified or bank check on or before July 19, 2013.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

RESOLUTION NO.: 154 - 2013

OF

JULY 15, 2013

**RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO RETAIN
THE SERVICES OF A QUALIFIED ENGINEERING FIRM AND
CONTRACTOR TO INVESTIGATE AND EVALUATE THE STABILIZATION
AND REPAIR OF THE COMBINED SEWER OVERFLOW OUTFALL NO. 12
TO PREVENT
THE BYPASS DISCHARGE OF COMBINED SEWAGE FROM REGULATOR 10
INTO THE HUDSON RIVER**

WHEREAS, during heavy rainfall, a defect in Combined Sewer Overflow (CSO) Outfall No. 12 is causing raw sewage from Regulator 10 to discharge via overland flow into the Hudson River in violation of the City's State Pollutant Discharge Elimination System (SPDES) permit; and

WHEREAS, the overland discharge of such raw sewage is a threat to the health and safety of the City's residents as well as an environmental threat to the Hudson River; and

WHEREAS, it is necessary for the City to engage the services of a professional engineering firm and a contractor to investigate, evaluate and identify the cause of the problem and to determine the scope of the stabilization and repair of the CSO;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh hereby declares that the raw sewage discharge during heavy rainfall creates an emergency condition under Section 103(4) of the New York State General Municipal Law; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, that the Interim City Manager is hereby authorized to retain the services of qualified engineering firm and a contractor to investigate and evaluate the immediate problems with the CSO Outfall No. 12 and to determine the necessary work to stabilize and repair the CSO Outfall No. 12.

Assistant City Engineer Jason Morris explained that on July 9th we had a very intense rainfall. The intensity averaged five inches per hour. Shortly thereafter, the Newburgh Yacht Club called and indicated to us that there was storm water combined with sewer discharging through their parking lot. Further investigation revealed that a sinkhole had opened. Also it was discovered that an outfall pipe was clogged with stone as a result of CSX placing Bella Stone along the side of the right-of-way. Further investigation is necessary to make a final determination. That is the purpose of the resolution.

Slaughter commented that before any of the actual contracting can be done and before we can resolve the problems, we need to do an investigation to determine the conditions.

Councilman Dillard stated that we have had similar problems in that area. He asked Morris if he thinks the investigation can be expanded to look at what is there presently and what needs to be done to correct it. Dillard stated that the city is presently under litigation for some of these issues.

Morris remarked that we are currently in negotiation with the NYS DEC for an Asset Management Plan. The AMP will require us to go and televise a majority of the storm sewers in the city. From that plan, we will be able to get a better idea of the state of the infrastructure in Newburgh. Also we will be purchasing asset management software that will allow us to perform a real-time evaluation of our infrastructure.

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

Ayes- Councilwoman Angelo, Councilman Brown, Councilman Dillard, Councilwoman Lee, Mayor Kennedy-5

ADOPTED

OLD BUSINESS

There was no *old business* to discuss at this time.

NEW BUSINESS

There was no *new business* to discuss at this time.

PUBLIC COMMENTS REGARDING GENERAL MATTERS OF CITY BUSINESS

Jarod Harris read a report of Lewis Howard Latimer, an influential Black man who left behind a legacy of being one of the most profound inventors of his time. The son of a slave, Latimer learned to use a setsquare and a ruler among other tools. When his boss recognized his talent for sketching patent drawings he was elevated to the position of head draftsman. In 1874 Latimer co-patented an improved toilet system for railroad cars called the *Water Closet*. Most notably, he patented the process of manufacturing carbons, which is an improved method for the production filaments used in light bulbs today.

The legacy that Latimer and numerous other African-American inventors left behind serves as an example (through slavery times and times of segregation and oppression) that history proves that the African-American was never at all how some may make us out to be. Regardless of one's biased opinions about African-Americans, our culture has always played a vital role in the establishment of not just the United States, but the entire world.

Barbara Smith spoke about Resolution #132-2013. Apparently we are purchasing a large screen to be used as digital signage. She asked where will this screen be located and what will it contain? Next she reminded everyone of the city's past use of the services of the engineering firm *McGoey, Hauser, et al.* That firm consistently received bids for its professional services because the firm was familiar with the work. So where have we progressed? She thanked the council for tabling the other issue. She plans to discuss it with the council at a later date.

Verne Bell requested an update on the skateboarding matter. Also she stated she attended the Newburgh Illuminated Festival. It was wonderful. She had heard that 1000 hours were spent on the planning and preparation of the festival. She wondered what it would be like if 1000 hours were spent on quality of life issues in Newburgh, such as the poverty, joblessness and homelessness.

Kippy Boyle addressed her concerns about emergency water department repairs. We are spending \$1.9 Million for an emergency occurring in the West End, \$690K for another water department repair and investigation, and now we have just learned about another emergency. She asked how this is going to affect the property taxes. It is a huge concern because we used to be in the

black in the water and sanitation departments. This scares her because we have a lot of tax exempt properties that don't pay for infrastructure repairs. But you and I do pay for them.

Next she mentioned that the Consolidated Iron site consists of seven acres of publicly owned land. According to the Charter, in order for it to be developed we must hold a referendum. What does our current site management plan have to do with our plans to use the property at this time? The property has been cleaned up. We know we can have soccer games there and we can read books and hold music events, etc. So why is the fence still up? And when are we going to be able to access our own property?

Pastor Austin stated that it is a pleasure to be able to address the council. If there were any questions or concerns about the Youth Empowerment Center, then she would have been more than willing to discuss it with them. She pointed out that a delay does not mean a denial. YEC agreed to step up with a public-private partnership. This is at no cost to the City at all. Austin remarked that she could have gone on to a happy land of retirement. But she chose to make a commitment to Newburgh, and most importantly to the youth. She pointed out that she does not make any money from the YEC.

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

FURTHER COMMENTS FROM THE COUNCIL

Councilwoman Angelo thanked everyone for coming to the meeting. She mentioned that her daughter is not well.

Councilman Brown did not have any comments at this time.

Councilman Dillard stated that he would like to sit down with Pastor Austin and discuss his concerns. He likes the concept, but there are things that need to be clarified first. He would like to set some time aside with Austin as soon as possible.

Councilwoman Lee did not have any comments at this time.

Mayor Kennedy commended Jarod Harris for doing some research. She has been reading some history, such as Frederick Douglas and several other African-Americans who have contributed greatly to our history. Women and minorities have been written out of history for a long time. It is good for us to recognize what people have contributed to this nation.

Kennedy asked the interim city manager to provide the audience with an update on the skate park.

Slaughter stated that we are proceeding with the design of the skate park. We have heard some comments from the young people. Everyone needs to understand that we have to have a skate park that works within our available property and our recreational facility. We are looking to meet with their representatives so that they have a real clear understanding of what has been budgeted, what we are prepared to put together and discover what works so that we can move forward on it.

Kennedy addressed comments regarding the water repairs. Newburgh has a very old infrastructure. The large chunk of funds is going to be used to repair the West sewer line that broke last year. The money to do the repair falls under a low interest rate bond. These projects are already budgeted and figured in. Nothing in this situation is really an option. It simply must be done. We are under mandates and we need to take care of it. We have already figured out the financing and we are moving ahead on it. It should not raise the taxes, and this council is committed to staying within the tax cap.

Last, she mentioned the festivals. All of our festivals are ways in which we attract people to this city and shine the light on what is great about Newburgh. Nobody is negating the fact that we still have issues in Newburgh

that need attention. We need to work on *all* things. But it is like going to school. You need Math, Science, English, and the Arts. You need all of these things to make the *whole*. She pointed out that all of this is important as we move the city forward. One of the biggest problems we have is the perception that people have of coming to Newburgh. We have to keep making Newburgh a safe place. People have actually pointed out that they did not realize there are a lot of good things happening here. It really has moved the needle in peoples' perception of Newburgh. We do not want to keep it a secret anymore.

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

ADJOURNMENT

There being no further business to come before the council, the meeting adjourned at 8:30 P.M.

Respectfully Submitted,

**KATRINA COTTEN
DEPUTY CITY CLERK**