



CITY OF NEWBURGH  
Council Work Session

November 21, 2013  
6:00 p.m.

1. Economic and Community Development/Real Estate:
  - a. (Res. 236) Approving the City's Consolidated Housing and Community Development Strategy and Action Plan for 2014.
  - b. (Res. 237) Amending an agreement with the Research Foundation for the State University of New York to develop an interactive website showing a map of abandoned properties in the City of Newburgh
  - c. (Res. 238) Agreement with Environmental Remediation and Financial Services, LLC for professional engineering services related to remediation of 210 Mill Street.
  - d. (Res. 239) Authorizing the sale of 255 Broadway to Edward G. Doering for the amount of \$45,000.00.
  - e. Request to purchase 350 Water Street Unit 7-9
  - f. (Res. 241) A resolution expressing conceptual support for the application of Mill Street Partners, Inc.
  
2. Finance:
  - a. (Res. 240) Adopting a policy for long and short term borrowing for capital purchases
  - b. Monthly Financials
  
3. Discussion:
  - a. (Res. 235) Scheduling a public hearing to receive comment on the renewal of a cable franchise agreement with Time Warner Cable
  - b. Board openings:
    - Conservation Advisory Council
    - Police Community Relations Advisory Board
  - c. (Res. 242) Intermunicipal Agreement between the County of Orange and the City of Newburgh to improve mobile data communications among first responders.
  
4. Executive Session:
  - a. Pending Litigation
  - b. Matters pertaining to the appointment of a particular individual

RESOLUTION NO.: 236 - 2013

OF

NOVEMBER 25, 2013

**A RESOLUTION APPROVING THE CITY OF NEWBURGH'S CONSOLIDATED HOUSING AND COMMUNITY DEVELOPMENT STRATEGY AND ACTION PLAN FOR FISCAL YEAR 2014**

WHEREAS, the City of Newburgh has prepared a five-year Consolidated Housing and Community Development Strategy and Plan in accordance with the planning requirements of the Cranston-Gonzalez National Affordable Housing Act; and

WHEREAS, this Consolidated Plan was prepared in accordance with all statutory requirements, including those related to citizen participation; and

WHEREAS, this plan was submitted to and approved by the U.S. Department of Housing and Urban Development; and

WHEREAS, the City has now prepared a one-year Action Plan in order to implement various elements of the strategies identified in its Consolidated Plan during the second year it is in effect; and

WHEREAS, this one-year Action Plan contains the following proposed activities and budget for the City's 2014 Community Development Block Grant Entitlement Program;

Entitlement Revenue	\$742,000
Program Income	\$25,000
<b>Total</b>	<b>\$767,000</b>
<b>Expenditures 2014</b>	
Administration	\$154,752
In-Rem Stabilization	\$75,719
Scattered Sidewalk	\$66,525
Park Improvement	\$85,000
Strategic Code Enforcement	\$52,700
Community Policing/ Neighborhood Services	\$9,599
Workforce Development	\$40,000
Downing Park Greenhouse	\$45,000
Business Services/ Façade Improvement	\$237,705
<b>TOTAL BUDGET</b>	<b>\$767,000</b>

**NOW, THEREFORE, BE IT RESOLVED,** that the City Council of the City of Newburgh, New York does hereby approve the attached one-year Action Plan, subject to further revisions as may be necessary to meet federal requirements; and

**BE IT FURTHER RESOLVED,** that the City Manager be and is hereby designated the official representative of the City of Newburgh and he is hereby authorized to submit the one-year Action Plan and execute the Standard Form 424 (Application for Federal Funds) and certifications attached thereto; and he is further directed and authorized to act in connection with the submission of a one-year Action Plan and to provide such additional information as may be required; and

**BE IT FURTHER RESOLVED,** that the Secretary of Housing and Urban Development be and hereby is assured full compliance by the City of Newburgh with the certifications attached hereto and made a part hereof.

RESOLUTION NO.: 237 -2013

OF

NOVEMBER 25, 2013

**A RESOLUTION AMENDING RESOLUTION NO.: 167-2013 OF AUGUST 17, 2013  
AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE AN AGREEMENT  
WITH THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW  
YORK TO DEVELOP AN INTERACTIVE WEBSITE SHOWING A MAP OF  
ABANDONED PROPERTIES IN THE CITY OF NEWBURGH**

**WHEREAS**, by Resolution No.: 167-2013 of August 17, 2013, the City Council of the City of Newburgh authorized the Interim City Manager to enter into an Agreement with the Research Foundation for the State University of New York for the development of an interactive website showing a map of abandoned properties in the City of Newburgh with a term set to expire on October 31, 2013 and for a total cost of \$11,804.00 to be funded through a Smart Growth Grant awarded to Orange County; and

**WHEREAS**, amendments to Exhibit "A" of the Agreement, annexed hereto and made part hereof, reducing the total number of properties from 748 to 355 and extending the term of the Agreement to November 29, 2013 are required; and

**WHEREAS**, this Council has determined that authorizing the Interim City Manager to execute the Agreement with the amendments to Exhibit "A" 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 be and he is hereby authorized to execute an Agreement with the Research Foundation for the State University of New York for the development of an interactive website showing a map of abandoned properties in the City of Newburgh with the amendments set forth in the revised Exhibit "A" in substantially the same form as annexed hereto to complete the scope of work set forth therein.

**AGREEMENT BETWEEN**  
**THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK**  
**AND**  
**CITY OF NEWBURGH**

This Agreement ["Agreement"] made by and between **THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK**, a nonprofit, educational corporation organized and existing under the laws of the State of New York with its principal offices located at 35 State Street, Albany, New York 12207-2826, hereinafter referred to as "Foundation," acting on behalf of the State University of New York College at New Paltz and their Center for Research, Regional Education and Outreach (CRREO), and the **CITY OF NEWBURGH**, with its principal offices located at 83 Broadway, Newburgh, NY, 12550, hereinafter referred to as "Commission".

**WITNESSETH:**

**WHEREAS**, Foundation agrees to use its best efforts to **develop an interactive website showing a map of abandoned properties in the city of Newburgh**, herein referred to as the "Project", as described in the Scope Work attached hereto as Exhibit A and made an integral part of this Agreement.

The Project Manager at SUNY New Paltz will be **Joshua Simons**, who will direct student resources and utilize his own expertise and skills to carry out a Project in accordance with the schedule set forth in Exhibit A.

**James Slaughter, Interim City Manager**, will serve as the primary contact for the Commission.

The term of this Agreement shall be from **July 1, 2013 to October 31, 2013** unless extended or terminated as provided hereunder.

This Agreement may be terminated by either party, with or without cause by giving thirty (30) days written notice to the other party. The thirty (30) days written notice period shall commence on the date contained within the written notice to the affected party.

Both parties agree, to the fullest extent permitted by law, to indemnify, hold harmless and defend the indemnified parties and its directors, officers, employees, consultants, agents and representatives against all claims, including claims of third parties, causes of action, damages, losses or expenses, including without limitation attorneys' fees, arising out of or resulting from this Agreement or any action arising hereunder; provided, the indemnified party's actions are not based upon negligence or willful misconduct.

Total funding for the project will be \$11,804. Payments will be made by the Commission to the Foundation upon submission of invoices according to the following schedule:

Payment #1:	\$3,935	upon execution of this agreement
Payment #2:	\$3,935	due on August 31, 2013
Payment #3:	\$3,934	due on October 31, 2013

All payments shall be made payable to The Research Foundation for the State University of New York (Tax ID#: 14-1368361) and forwarded to 35 State Street, Albany, NY 12207, Attn: Cash Receipts – SUNY New Paltz.

Signed \_\_\_\_\_

James Slaughter  
Interim City Manager  
City of Newburgh

Date \_\_\_\_\_

Signed \_\_\_\_\_

Justine Gordon  
Associate Director, Grants and Contracts Administration  
Research Foundation for the State University of New York

Date \_\_\_\_\_

## EXHIBIT A

### Scope of Work

#### City of Newburgh Integrated Data Map:

**The Website:** The City of Newburgh seeks to collect data from various sources on the vacant properties within its boundaries, evaluate this data and make it more accessible for policy development and implementation. Currently information is compiled in excel spreadsheets.

Using these spreadsheets, the Center for Research, Regional Education and Outreach at SUNY New Paltz will create a searchable online database and an interactive map. Queries of this data base will be possible based on each property's section, block and lot number (SBL), street address, or any other attribute field. The resulting web application will be hosted on a web site created for the City of Newburgh; it will use a Google Maps interface embedded in a Joomla content management system website.

The individual parcels will also be selectable on the interactive map, which will display a summary of information for the property, and a link to an individual page which will contain all of the data collected for that property. The properties on the map will be displayed as toggle-able overlays. Depending on the preference of the City, the individual selectable layers may be separated in a number of ways, for example by ownership and manner in which the property is identified as vacant, or by street or neighborhood. These layers may be displayed simultaneously, and in any combination. The map will also include a layer which displays public transportation routes, a layer that displays parks and open spaces, a layer designating historic districts, and a layer identifying the Waterfront Redevelopment Program boundary. Ideally property data will be imported into a Google Fusion Table, allowing for the map itself to be searchable. Barring that, the search function will be indexed to the data on the individual pages for each property.

355

**Number of Properties:** The data collected by the City includes information on some 748 properties. All of these properties will be included on the map, and have an associated page on the site to display the data.

**Zoning Changes:** In anticipation of zoning changes in the Spring of 2014, CRREO will update the zoning field for the included properties when the changes go into effect.

**Presentations:** CRREO will present and demonstrate the capabilities of the web site at a community launch in October 2013, and at a regional conference on December 6<sup>th</sup>, 2013.

CRREO will complete the web site by 9-30-2013 for a cost of \$11,804.

11-27-2013

City of Newburgh Vacant Properties Map Site Timeline

#	Task	Measurable Outcome	July	August	September
1	Geocode Addresses				
2	Import Data into ArcGIS				
3	Convert Data into Web Friendly Format				
4	Design Site Template				
5	Create Google Maps KML's				
6	Integrate Data and Map into Website				
7	Go Live				

RESOLUTION NO.: 238-2013

OF

NOVEMBER 25, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ENVIRONMENTAL REMEDIATION AND FINANCIAL SERVICES, LLC FOR PROFESSIONAL ENGINEERING SERVICES IN CONNECTION WITH THE REMEDIATION OF 210 MILL STREET (SECTION 43, BLOCK 3, LOT 7.1) IN THE CITY OF NEWBURGH**

WHEREAS, by Resolution No.: 29-2008 of February 25, 2008, the City Council of the City of Newburgh authorized the City Manager to execute an agreement with First Environment for professional services in connection the remediation of 210 Mill Street (Section 43, Block 3, Lot 7.1); and

WHEREAS, First Environment solicited and received proposals for certain large volume injection work to remediate contamination at 210 Mill Street and selected Environmental Remediation and Financial Services, LLC to perform the work; and

WHEREAS, Environmental Remediation and Financial Services, LLC successfully completed the scope of work at 210 Mill Street as set forth in its proposal; and

WHEREAS, First Environment has requested that the City make payment directly to Environmental Remediation and Financial Services, LLC; and

WHEREAS, the City has appropriated and set aside sufficient funds in the amount of \$120,500.00 to pay for the scope of work completed by Environmental Remediation and Financial Services, LLC; and

WHEREAS, under the New York State Department of Environmental Conservation Environmental Restoration Program, the City will be reimbursed for ninety (90%) percent of the costs of the scope of work; and

WHEREAS, by making payment directly to Environmental Remediation and Financial Services, LLC, the City will not have to pay a five (5%) percent mark-up on the costs of the work; and

WHEREAS, entering into an agreement with Environmental Remediation and Financial Services, LLC 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 Interim City Manager be and he is hereby authorized to execute an agreement in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require with Environmental Remediation and Financial Services, LLC for professional engineering services in connection with the remediation of 210 Mill Street (Section 43, Block 3, Lot 7.1) in the City of Newburgh.

## MASTER SERVICE AGREEMENT

This Master Service Agreement ("Agreement") dated the \_\_\_ day of \_\_\_\_\_, between City of Newburgh, NY ("Client"), and Environmental Remediation and Financial Services, LLC ("Contractor"), located at 2150 Highway 35, Suite 250, Sea Girt, New Jersey 08750.

**TYPE OF AGREEMENT:** Master Service Agreement with Services to be provided on a Task Order basis.

**WHEREAS,** Client has need of professional environmental engineering and remediation services;

**WHEREAS,** Contractor has experience and is in the business of performing professional engineering and remediation services and is willing to provide such services to Client;

**WHEREAS,** Client and Contractor have determined that a Master Service Agreement between them for environmental engineering and remediation services would be mutually beneficial;

**NOW, THEREFORE,** in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. **PURPOSE.** The purpose of this Master Service Agreement is to provide a mechanism whereby the parties to this Agreement may develop Task Orders for Services ("Task Orders") to be performed within the terms and conditions set forth herein.
2. **TERM & TERMINATION OF AGREEMENT**
  - 2.1 Unless otherwise stated herein, the terms and conditions of this Agreement shall remain in effect until terminated by either party upon thirty (30) calendar days prior written notice to the other party.
  - 2.2 The terms and conditions of this Agreement will continue beyond the expiration of the Agreement to the extent that any Task Order is in force at the time of the expiration.
  - 2.3 Upon receipt of notice of termination from Client of this Agreement or any Task Order, Contractor shall immediately cease performance of the Services to the extent set forth in the termination notice and shall take all reasonable steps to minimize costs relating to such termination. Client shall pay for Services rendered through the date of termination, plus reasonable termination costs.
  - 2.4 Either party may (but shall not be obligated to) cancel or terminate this Agreement for default by written notice to the other: (1) if either party shall become insolvent or make a general assignment by or for the benefit of creditors; or (2) if a petition under the Bankruptcy Act is filed against either party; or (3) if

either party fails to perform its obligations under this Agreement. The terminating party shall deliver to the other party a written notice of termination specifying the grounds for termination and the date upon which such termination becomes effective. The obligations of the parties upon notice of termination by default shall be as set forth herein.

### **3. SCOPE OF WORK**

- 3.1 The Scope of Work ("SOW") for Task Order 1 issued under this Agreement is set forth in Appendix A attached hereto and incorporated herein by reference. Work to be performed under specific Task Orders shall be referred to in this Agreement as the Services. Contractor shall furnish all reports, analyses and other deliverables under this Agreement ("Deliverables") in accordance with the SOW and terms set forth in the applicable Task Order.
- 3.2 The individual Services to be performed on a Task Order basis shall be within the SOW and defined in each Task Order by the parties.

### **4. TASK ORDERING PROCEDURES & ACCEPTANCE OF SERVICES**

- 4.1 Task Orders shall be developed by the parties for each specific project or project phase and issued in the general format as provided in Appendix A.
- 4.2 The following task ordering procedures shall be used for Task Orders issued under this Agreement for each specific project:
  - 4.2.1 Client will request that Contractor provide certain Services, and Contractor will provide in writing the proposed SOW, project schedule, and budget for the requested Services ("Proposal");
  - 4.2.2 The parties will negotiate any changes to the Proposal and the Contractor will forward a completed Task Order to Client for final review and signature; and
  - 4.2.3 Upon receipt of an executed Task Order, Contractor will perform the designated Services in accordance with that Task Order.
- 4.3 All Services and Deliverables to the Task Orders shall conform to the technical requirements and time schedule set forth in project specific Task Orders. Unless otherwise specified in a given Task Order, the Services and Deliverables not rejected in writing within ten (10) calendar days of completion and/or receipt shall be deemed accepted by Client.

- 5. **SCHEDULE.** Contractor shall make reasonable efforts to complete the Task Order's identified Services and Deliverables in all respects by the time set forth within the Client's proposed schedule and/or Task Order if applicable.

## 6. FEES AND PAYMENT TERMS

- 6.1 Client shall pay Contractor at the rates set forth in the applicable Task Order for the Services to be performed under such Task Order.
- 6.2 Project-specific fees shall be estimated by Contractor and approved by Client in each executed Task Order; and such amount, unless otherwise agreed to, is the maximum amount for which Client shall be liable under such specific Task Order. In the event of unforeseen conditions or circumstances, changes in SOW, Services, Deliverables, costs, or schedule, Task Orders and approved fees shall be amended in writing through the execution of a Task Order modification which shall not be unreasonably withheld.
- 6.3 Invoices for lump sum by task or lump sum by milestone contracts shall be billed upon task completion or milestone achievement. Invoices for time and material and unit price contracts will be billed monthly for Services rendered during the prior month(s) and/or upon completion. Unless otherwise agreed upon in writing, invoices are payable upon receipt. Interest of one and one-half percent (1 1/2%) per month (but not exceeding the maximum rate allowable by law) will be payable on any amount not paid within 30 days. Any costs incurred in collecting delinquent amounts, including attorney fees and court costs, shall be paid by the Client. Notification of invoices in dispute must be made in writing within 21 days of date of invoice or they will be assumed by both parties to be accurate in all respects, due and payable.

In the event that payment has not been made in accordance with the terms of this Agreement, in addition to any other remedy which Contractor may have under law or equity, Contractor may stop work, and/or terminate this Agreement.

- 6.4 For time and material and unit price contracts with a contract ceiling, if at any time Contractor has reason to believe that an increase in such limitation will be necessary, it will give prior notice to that effect providing a written estimate to complete the Services and proposing a new limitation figure and giving appropriate supporting data so that Client may, at its sole discretion, increase such limitation by written modification to this Agreement.

Contractor shall not be required to perform the Services to the extent that such performance exceeds the ceiling price of this Agreement. In the event of a dispute relating to the contract ceiling price, such dispute shall be resolved in accordance with the Disputes Section of this Agreement. Contractor shall continue to perform the Services pending the outcome of the Dispute by the configured panel.

- 6.5 Unless otherwise set forth in this Agreement, all payments shall be in United States Dollars (\$US). Where exchange rates are involved, the rate of exchange

between \$US and the other currency involved in the transaction shall be the rate of exchange as of the date of invoice. The date of each invoice shall be clearly marked on each invoice.

## **7. CLIENT & CONTRACTOR RESPONSIBILITIES**

- 7.1 To the extent that Client or related parties have access to information relating to Services to be performed, Client shall provide such information ("Information") to Contractor, which is reasonably available to assist in the efficient, proper performance of the Services by Contractor. Such Information includes available site history and the identification, location, concentration, quantity, and character of known or suspected hazardous conditions, wastes, substances, and underground utilities that are likely to pose a risk to human life, health, safety, or to the environment. Contractor shall be entitled to rely upon the Information provided by the Client, the Client's agents, or from generally accepted sources, without independent verification and shall bear no liability arising from such reasonable reliance.
- 7.2 Client shall provide site access or arrange for access as may be reasonably required by Contractor to perform the Services. Contractor shall not be responsible for any subsurface or concealed condition, utility, structure, or obstruction ("Condition") not described in sufficient detail in this Agreement or in written and oral information provided by Client to place Contractor on clear notice of the type and specific location of the Condition prior to the commencement of the Services. Prior to performing intrusive tasks, such as excavation, drilling, or borings, Contractor shall contact the appropriate utility company or utility markout service to determine the location of subsurface utilities that are a matter of public record.
- 7.3 All soils, sludge, debris, core borings, cleaning materials and other derivative or remedial waste materials ("Wastes") relating to the Services shall be owned either by the Client, or the site owner if different from the Client. Wastes shall be handled on-site by Contractor in accordance with applicable law, regulations, codes and the specific instructions of Client. All off-site treatment, storage and disposal decisions with respect to Wastes shall be made by the Client or Site Owner; provided, however, that any and all Wastes that cannot be introduced back into the environment at the site of the Services under existing law without additional treatment shall be packaged or placed in containers and temporarily stored on-site in accordance with applicable law, pending appropriate off-site treatment and/or disposal. Contractor, at Client's request, shall assist the Client in identifying appropriate alternatives for the off-site treatment, storage or disposal of Wastes, but final selection of any such alternatives shall rest solely with Client. Client shall indemnify and hold Contractor harmless from any

liability resulting from the selection of any off-site treatment, storage or disposal alternative.

- 7.4 Contractor shall perform the Services utilizing the standard of care normally exercised by professional environmental engineering and remediation firms in performing comparable services under similar conditions. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.
- 7.5 Contractor is responsible for preparing any site work designated by a specific Task Order to reasonably reduce the risk of accidental spillage or release of hazardous substances, petroleum or other contaminants during the performance of the Services. Contractor shall use good management practices to reduce the risk of release of volatiles or other contaminants from the Site. Contractor shall act, without prior instructions from Client, to take appropriate, immediate response measures to address any accidental spills or releases caused by Contractor. Contractor shall notify Client of any such spills or releases, and response actions taken, as soon as possible thereafter.
- 7.6 Contractor shall not perform intrusive activities under this Agreement without authorization of Client. Whether an act is intrusive or not is at the sole discretion of Contractor. Client may request to be present during any intrusive work at a Site. If such a request is made, no intrusive work shall be conducted if Client is not present, unless otherwise authorized by Client. Contractor shall ensure that all intrusive activities are conducted in compliance with the terms of this Agreement, the directions of the Client and applicable law, regulation or code.
- 7.7 All equipment shall be decontaminated prior to being brought onto the Site. As appropriate, Contractor shall decontaminate augers and other contaminated equipment on location utilizing a decontamination basin or other appropriate equipment. Wastes from decontamination efforts will be placed in appropriate labeled and closed containers and placed at an on-site location as directed by the Client.
- 7.8 Client and its Representatives shall not photograph or record Contractor's equipment and processes, as same are Trade Secret and Proprietary Information.
- 7.9 Client and its Representatives shall comply with all OSHA regulations on site and not enter Exclusion Zones for site work.
8. **PROPRIETARY INFORMATION.** Proprietary confidential information ("Proprietary Information") developed or disclosed by either party under this Agreement shall be clearly labeled and identified as Proprietary Information by the disclosing party at the time of disclosure. When concurrent written identification of Proprietary Information is not feasible at the time of such disclosure, the disclosing party shall provide such

identification in writing promptly thereafter. Oral communications pertaining to the Services shall be presumed to be Proprietary Information unless otherwise indicated by the disclosing party. Any information (whether in written, electronic, or oral form) disclosed by Contractor relating to the Contractor's technology shall be presumed to be Proprietary Information.

Each party shall handle Proprietary Information received from the other party in the same manner as the receiving party handles its own Proprietary Information. Disclosure of Proprietary Information shall be restricted to those individuals who need access to such Proprietary Information as needed to ensure proper performance of the Services.

Neither party shall be liable for disclosure or use of Proprietary Information which: (1) was known by the receiving party at the time of the disclosure due to circumstances or events unrelated to this Agreement; (2) is generally available to the public without breach of this Agreement; (3) is disclosed with the prior written approval of the disclosing party; or (4) is required to be released by law or court order provided, however, that Client shall provide Contractor with notice immediately so that Contractor may contest such potential use or disclosure

Client shall indemnify Contractor against any liability for Deliverables that have been changed without Contractor's written approval or have been used for a purpose not intended by the parties under this Agreement. Under no circumstances is Client or anyone acting through, with, or on behalf of Client, permitted to use any Deliverable (or other work product of Contractor or its employees or subcontractors under this Agreement) in connection with any services to be provided by Client to another, sale or offering for sale of securities, including without limitation stock, bonds, notes or any other instruments or transactions which call for investments, loans or other transfers of money to Client without Contractor's prior written authorization. Client will indemnify and hold harmless Contractor, its directors, officers, employees, agents and subcontractors from any loss, claim, suit, expenses or other cost (including attorneys and court costs and other costs of investigation, defense and consulting) which may be incurred in connection with any violation of this Section.

Each party shall return all Proprietary Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon termination of this Agreement, whichever occurs first. Each party shall have the right to retain a copy of the Proprietary Information for its internal records and subject to the restrictions set forth in this Section.

Photography, video, sketches, notes or other documentation of Contractor's equipment and processes is strictly prohibited, unless provided by Contractor to Client by written request.

9. **CHANGED CONDITIONS.** The discovery of any hazardous waste or substance, underground obstruction, underground utilities or other latent obstruction to the performance of the Services to the extent that such conditions are not the subject of the

Services as defined in the Scope of Work, and to the extent that such conditions were not brought to the attention of Contractor prior to execution of this Agreement, or any change in law that materially affects the obligations or rights of either party under this Agreement, shall constitute a materially different site condition entitling Contractor to an equitable adjustment in the contract price, time of performance, or both, as appropriate.

**10. CHANGES TO THE SERVICES.** Client may direct changes within the general Scope of Work. Upon notification of such direction, Contractor shall prepare an estimate of the additional cost and time required, if any, to perform the change. Upon mutual written agreement, Contractor shall perform the change and an equitable adjustment shall be made to the price and/or time schedule as appropriate.

**11. WARRANTY & REJECTED WORK**

11.1 Contractor makes no warranty as to any environmental hazard present on any Site or property evaluated hereunder, and all reports or Deliverables generated pursuant to this Agreement are qualified as being based upon sampling data obtained during performance of the Services or other existing data reasonably available to Contractor. Contractor shall not be responsible for any latent characteristics of any Site or property being investigated which could not be reasonably discovered during the performance of the Services under generally accepted industry practices or standards, or as specifically set forth herein. Contractor makes no legal representations whatsoever concerning any matter, including, but not limited to, the ownership of any property or the interpretation of any law.

11.2 Any defective Services or nonconforming materials or equipment that may be discovered at any time prior to expiration of the warranty period, shall be removed and replaced by Services which shall conform to the provisions of the applicable Task Order. Any material condemned or rejected shall be removed at once from the Site.

**12. FORCE MAJEURE.** Neither party shall be responsible for any delay or failure in performance, except obligations to make payments hereunder for work previously performed, to the extent that such delay or failure was caused by a force majeure event including Act of God, war, civil disturbance, governmental action, labor dispute unrelated to the party claiming the force majeure event, computer virus or denial of access to the site or any other event beyond the reasonable control of the claiming party.

Performance under this Agreement shall resume promptly once the cause of delay or failure ceases and an equitable adjustment shall be made to the price and/or schedule of the Services.

**13. INDEMNIFICATION**

13.1 Contractor shall defend, indemnify, and hold Client harmless against loss, injury, damage, claim or suit ("Loss"), including reasonable attorney fees, to person or property, brought by any third party, to the extent such Loss is directly caused by the negligence or willful misconduct of Contractor in performing the Services; provided, however, that the Contractor shall bear no liability for Loss to the extent that such Loss relates to the cause, negligence, contributory negligence or misconduct of Client or its agents or representatives, or Client's failure to comply with the terms hereof, or relates to any release or threatened release to the environment ("Release") of any substance not caused or contributed to by Contractor's negligence

Client shall defend, indemnify, and hold Contractor harmless against loss, injury, damage, claim or suit ("Loss"), including reasonable attorney fees, to person or property, brought by any third party, to the extent such Loss is directly caused by the negligence or willful misconduct of Client in performing its obligations under this Agreement; provided, however, that the Client shall bear no liability for Loss to the extent that such Loss relates to the cause, negligence, contributory negligence or misconduct of Contractor or its agents or Contractor's negligence or failure to comply with the terms hereof.

13.2 Each party shall give prompt written notice of claims under this provision to the indemnifying party per Section 28 herein.

13.3 To the extent that state and/or federal law limits the terms and conditions of this section, it shall be deemed so limited to the extent necessary to comply with such state and federal law. This section shall survive termination of this Agreement.

**14. LIMITATIONS OF LIABILITY.** In no event shall either party be liable for any incidental, special or consequential damages arising out of or related to the services provided under this Agreement, even if advised of the possibility of such damages. Notwithstanding any other provisions of this Agreement, and unless otherwise agreed to or subject to a greater limitation as a matter of law, Contractor's liability to Client under this Agreement for any loss or damage arising out of or in connection with any work, Services or Deliverables related to this Agreement, including professional negligence, errors or omissions, shall be limited to the Contractor's insurance policies listed in Paragraph 15 below, or to the value of this Agreement, whichever is greater.

**15. INSURANCE**

During the term of this Agreement, Contractor shall maintain the following insurance coverage and limits of liability.

- a. Workers Compensation Insurance with statutory limits and Employers Liability Insurance including occupational disease, with a limit of not less than \$1,000,000.
- b. Commercial General Liability Insurance in an amount of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate. This coverage shall include premises and operations, explosion, collapses, and underground hazards, products and operations, contractual, independent contractors, broad form property damage and bodily injury.
- c. Comprehensive Automobile Liability Insurance for owned, hired, or non-owned vehicles in an amount not less than \$500,000.
- d. Professional Liability, Errors and Omissions insurance in an amount of at least \$1,000,000 each occurrence and in the aggregate.

## 16. ACKNOWLEDGMENT

- 16.1 The Client recognizes that environmental, geologic, and geotechnical conditions can vary from those encountered at the times and specific sampling locations where samples are obtained and that there are inherent limits to the reliability of sampling data results, as well as uncertainties with respect to the appropriate interpretation of such data, despite the use of due professional care.
- 16.2 Client further recognizes that commonly used methods for performing environmental investigations including, but not limited to, drilling borings and excavating trenches, involve an inherent associated risk. These exploration methods may penetrate existing subsurface or concealed barriers, which could result in the migration of contaminants to previously uncontaminated areas. Although techniques such as backfilling any borings and trenches with grout or other means, according to the present state of the practice, are intended to provide a seal against such possible contaminant migration, Client recognizes that such techniques may be imperfect despite the reasonable efforts of Contractor.
- 16.3 Client further recognizes that subsurface equipment installed by Contractor is the property of Contractor and cannot be used for other purposes.

17. **COMMUNICATIONS WITH REGULATORY AGENCIES.** All of Contractor's written or oral communications to or with federal, state, or local agencies relative to Services provided under this Agreement will be copied to the Client. This shall not include proprietary information.

## 18. DRAFT REPORTS/DELIVERABLES

- 18.1 All written reports shall be submitted to Client in draft form, prominently marked "DRAFT," until Client authorizes Contractor to deliver the reports in final form.
- 18.2 Deliverables shall comply with the technical requirements and time schedules set forth in each Task Order, provided that the Client has met its responsibilities relating to such Deliverables and the terms of this Agreement. Further, said time schedules shall be in accordance with appropriate weather conditions, strikes, labor disputes or backorder of materials as well as the Force Majeure Section herein.
- 18.3 Deliverables submitted by Contractor to Client are the property of the Contractor and, unless otherwise agreed to in writing by Contractor, are for the sole benefit and use of Contractor and may not be used or relied on by any other party; Client agrees to indemnify and hold Contractor harmless from any Loss, including reasonable attorneys' fees, from any unauthorized use or modification of Deliverables provided by Contractor pursuant to this Agreement.
19. **DISPUTES.** Any dispute relating to this Agreement shall be submitted to a panel consisting of at least one representative of each party who shall have the authority to enter into an agreement to resolve the dispute. The panel shall meet for a maximum of three days. Should this dispute resolution procedure be unsuccessful, the matter may be submitted by either party to a court of competent jurisdiction in the State of New Jersey. No written or oral representation made during the course of any panel proceeding or other settlement negotiations shall be deemed a party admission.
20. **INDEPENDENT CONTRACTOR.** Contractor is an independent contractor and shall not be deemed to be an employee or agent of Client. Contractor shall indemnify and hold Client harmless against all liability and loss resulting from Contractor's failure to pay all taxes and fees imposed by the government under employment insurance, social security and income tax laws with regard to Contractor's employees engaged in the performance of this Agreement.
21. **CONFLICT OF INTEREST.** Client acknowledges that Contractor provides similar services for a broad range of other clients and agrees that Contractor shall be free to work for other clients in matters that do not involve the use of any Proprietary Information that has been disclosed by Client under the terms of this Agreement or do not directly relate to the specific Services provided by Contractor to Client under this Agreement.
22. **NON-SOLICITATION OF EMPLOYEES.** Neither party shall solicit for employment or hire the employees of the other party involved in the management or performance of the Services during the term of this Agreement and for one year thereafter.
23. **NONWAIVER.** No waiver of any breach of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this Agreement.

- 24. **SEVERABILITY.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and to the extent possible, this Agreement shall continue without affect to the remaining provisions.
- 25. **ASSIGNMENT.** Neither party may assign this Agreement without the written consent of the other party, which shall not unreasonably be withheld.
- 26. **DRAFTING PARTY.** Each party has reviewed this Agreement and any question of interpretation shall not be resolved by any rule of interpretation providing for interpretation against the drafting party. This Agreement shall be construed as though drafted by both parties.
- 27. **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of New Jersey, without giving effect to the choice of law principles thereof and any Court or Administrative Proceedings shall be venued in New Jersey.

28 **NOTICE**

Any notice given by either party shall be in writing and shall be deemed given, three (3) days after deposited in the United States mail, postage prepaid, certified return receipt requested, or upon actual delivery to the other party at the following addresses:

To Client:

To Contractor:  
ERFS  
2150 Highway 35  
Suite 250  
Sea Girt, NJ 08750  
Attn: Mark Vigneri

- 29. **SURVIVABILITY.** The obligations set forth in Articles 3, 4, 6-8, 11-15, 19, 21-30, shall survive the termination of this Agreement regardless of the cause of termination.
- 30. **ENTIRE AGREEMENT.** The parties acknowledge that they have read this Agreement, understand it and agree to be bound by its terms. This Agreement supersedes all prior agreements, whether written or oral, relating to the subject matter hereof. No modification of change to this Agreement shall be binding unless such modification or change is in writing and signed by an authorized representative of each party.

**IN WITNESS WHEREOF,** Client and Contractor have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**FOR: Client**

**FOR: Contractor**

\_\_\_\_\_  
**Signature**

James Slaughter  
\_\_\_\_\_

**Name (Typed)**

Interim City Manager  
\_\_\_\_\_

**Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**

Mark G. Vigneri  
\_\_\_\_\_

**Name (Typed)**

President & CEO  
\_\_\_\_\_

**Title**

\_\_\_\_\_  
**Date**

**APPENDIX A  
TASK ORDER 1 SCOPE OF WORK**

This Task Order 1 is made the \_\_\_ day of \_\_\_\_\_, between City of Newburgh, NY ("Client"), and Environmental Remediation and Financial Services, LLC ("Contractor"), located at 2150 Highway 35, Suite 250, Sea Girt, NJ 08750, and is hereby incorporated in the Master Service Agreement ("Agreement") between the parties dated \_\_\_\_\_. This Task Order amends and supplements the Agreement to the extent the terms and conditions herein differ from those contained within the Agreement. All terms and conditions in the Agreement not modified by this Task Order shall be applicable.

**Scope of Work** - Contractor to perform an application of the On-Contact Remediation Process® at Provan Ford Site consistent with Scope of Work outlined in Contractor's Technical and Cost Proposal ("Proposal") submitted to Client dated August 17, 2012 / Proposal number: 14-1296-N herein attached.

**Task Schedule** - Project schedule is in the Proposal.

**Task Budget** – Contractor's charges to perform the project, taking into account the cost and technical limitations and assumptions presented in our Proposal is \$120,500, as described in the attached Proposal, not including minor variable charges listed in the Proposal.

**Method of Payment** - Client agrees that Contractor will invoice Client on a lump sum basis. The schedule for payments is as stated in the Proposal.

**IN WITNESS WHEREOF**, Client and Contractor have caused this Task Order 1 to be executed by their duly authorized representatives as of the date first written above.

**FOR: Client**

**FOR: Contractor**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name (Typed)**

Mark G. Vigneri  
**Name (Typed)**

\_\_\_\_\_  
**Title**

President & CEO  
**Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

Environmental Remediation and Financial Services, LLC



Pay-for-Performance Remediation Services

**ENVIRONMENTAL  
REMEDIALTION and FINANCIAL  
SERVICES, LLC**

2150 Highway 35, Suite 250  
Sea Girt, NJ 08750  
(732) 974-3570  
Fax (732) 974-3571

August 17, 2012

Mr. Howard D. Feiler, PE, PMP  
Senior Associate  
First Environment, Inc.  
Boonton, New Jersey  
973.334.0003  
973.334.0928 (Fax)

RE: Request for Proposal – Groundwater ISCO  
Provan Ford, Newburgh, New York  
ERFS Proposal No. 14-1296-N

Dear Mr. Feiler:

Environmental Remediation and Financial Services, LLC (ERFS) is providing this engineering estimate to First Environment, Inc. in response to your recent request. This estimate provides ERFS' scope of work and associated costs to execute the work described in First Environment's RFP for Groundwater ISCO at the Provan Ford site located in Newburgh, New York.

ERFS provides injection services as our main line of business. Unlike other contractors that may focus on drilling services and only handle off the shelf products from time to time, ERFS is busy every week of the year handling concentrated hazardous oxidizers, reducing agents, acids, bases, and catalysts, blending them on site for remediation design specifications. ERFS maintains custom equipment configurations for large and small applications mobilized from our Lakewood, New Jersey office.

ERFS specializes in the use of complimentary in situ processes including chemical oxidation and enhanced biodegradation. ERFS conducts both injection services for site owners and consultants according to a set formulation and scope of work and also implements in-house designs and Pay-for-Performance remediation projects. ERFS leads the industry in Pay-for-Performance contracting where our goals are aligned to the owner's goals. Under Pay-for-Performance, ERFS' payment is contingent upon achieving project milestones that include contaminant reduction goals.

**Experience.** ERFS has successfully and safely completed thousands of injections to successfully treat chlorinated solvents and petroleum compounds at similar sites in New York and across the U.S. Work sites range from military installations and Superfund sites to private commercial and residential properties. Project examples similar to the large areas and large volume injections needed at the Provan Ford site include:

ERFS Proposal 14-1296-N Provan Ford Newburgh NY First Env 08-17-12

- **Consolidated Edison Power Company, Long Island City (Queens), New York.** ERFS injected ~75,000 gallons catalyzed peroxide using direct push injection methods using custom blended reagent formulations, with varied injection locations and depths.
- **JFK International Airport, NY.** ERFS injected ~275,000 gallons of catalyzed peroxide reagents into three AOCs at the airport, one of which was in a high traffic, high security air-side section of the facility. ERFS identified and coordinated compliance with facility restrictions on work areas, water sources, and security/access.
- **Exxon-Mobile and Hess Sites NY and NJ.** ERFS conducted dozens of treatments at multiple retail gas stations in the metro NY/NJ area per work scope. Treatment sites varied from abandoned to active/metropolitan. Techniques included injection wells and direct push injections.
- **Hancock Airport, Syracuse, NY.** ERFS conducted pay for performance remediation of a petroleum and solvent impacted maintenance hangar. Injection events resulted in meeting soil and groundwater criteria and allowing site closure.

#### ERFS Preparing Reagents



- **Watervliet Arsenal, NY.** ERFS conducted pilot test injections of oxidizers into deep bedrock to treat solvents in targeted groundwater zones.
- **Manufacturing Site Waste Pit, Sidney, NY.** ERFS conducted pilot testing injections into various injection devices using custom blended high pH oxidizers to treat very high concentrations of mixed petroleum, solvents, and PCBs.
- **Syracuse NY Superfund Site.** ERFS is awaiting permits to begin injections at over two acres of impacted groundwater at this Superfund site contaminated with xylene in Syracuse.
- **Jacksonville Waste Site, Jacksonville, FL** Injected ~10,000 gallons of catalyzed

Mr. Howard Feiler, PE, PMP

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peroxide over three monthly injection events per injection work scope. Soils were silty sands with clay. Contaminants were mixed VOCs.

- **Live Oak BP site, FL.** Injected into Floridan Aquifer (limestone) seven times to inject from 7,500 gallons to 10,000 gallons catalyzed peroxide each event. Formulations were developed based on ERFs recommendations and Golder editing/approval. Impacted zone primarily from 45 to 100 ft bgs with LNAPL bound up in limestone fractures and pores.
- **Florida State Petroleum Fund site, Inverness, FL.** ERFs injected over 45,000 gallons of catalyzed peroxide reagents at locations and depths specified by Arcadis using direct push injection techniques.
- **Safety.** ERFs has completed the multiple Contractor Safety Evaluation processes, including periodic updates, receiving a grade of "A" in all cases. ERFs has conducted injection work at dozens of sites using direct push pressurized injections and gravity feed treatment using vertical and horizontal wells. ERFs has conducted all site work under reviewed and approved Health and Safety Plans (HASPs), Spill Prevention, Control, and Countermeasures Plans (SPCCs), and Standard Operating Procedures (SOPs).

**Site Background and Injection Approach.** Site background information is provided in the RFP. ERFs will review additional information as available through First Environment to prepare any work plans or reports on activities. The following information is summarized from the RFP package:

- Onsite Treatment Areas (injection interval is 17 ft down to 25 ft bgs)
  - MW-2, 800 square feet (sf), ~12 DP Locations;
  - MW-4, 1,500 sf, ~20 DP Locations;
  - MW-5, 800 sf, ~12 DP Locations;
  - MW-6, 1,500 sf, ~20 DP locations.
- Offsite Treatment Areas (injection interval is 17 ft down to 25 ft bgs)
  - MW-13 and MW-15, 10,000 sf, ~80 DP Locations

**Reagent Selection** - ERFs has experience applying a range of chemical treatment reagents that will be effective on the site contaminants, including activated sodium persulfate and catalyzed hydrogen peroxide in various formulations and applications. Both these oxidizers will effectively treat the residual contaminants at the site. Comparing each oxidizer on a molar cost basis (e.g. cost per mole of oxidant), the most costly reagent is persulfate and the least costly is peroxide.

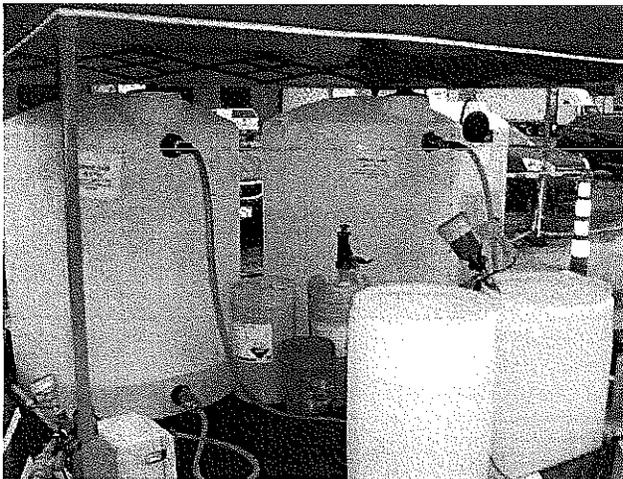
Catalyzed hydrogen peroxide is not as long lived in the subsurface as sodium persulfate; however, it is very cost-effective when treating a large contaminant mass. As indicated in the RFP and tables/figures, the residual contaminant mass within treatment areas is significant and will drive the oxidant demand at the early stages of treatment. ERFs recommends utilizing low cost oxidizer blends.

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Therefore, ERFS intends to begin treatment with diluted hydrogen peroxide (4% to 8%) catalyzed with ferrous sulfate (2% to 5.5%) and closely monitor the remedial progress during the pilot test phase. ERFS will avoid strong reactions that can be associated with catalyzed peroxide treatments by using diluted mixtures, controlling application rates, and allowing all catalyst-oxidant mixing to occur in the subsurface. By simply scaling back the peroxide concentration, reagent surfacing and oxidizer waste due to unproductive side reactions can be greatly minimized.



This approach does not require significant dilution water and injected volumes are expected to fall within roughly 10% of the treatment area pore volume during the injection event; therefore, concerns regarding contaminant concentration dilution and/or contaminant plume migration are greatly mitigated. ERFS will also avoid long periods of increased hydrostatic head at injection areas, which will further reduce the potential for contaminant migration from the treatment area. Reaction byproducts of the selected oxidants, catalyst, and initiators, do not form listed contaminants or hazardous

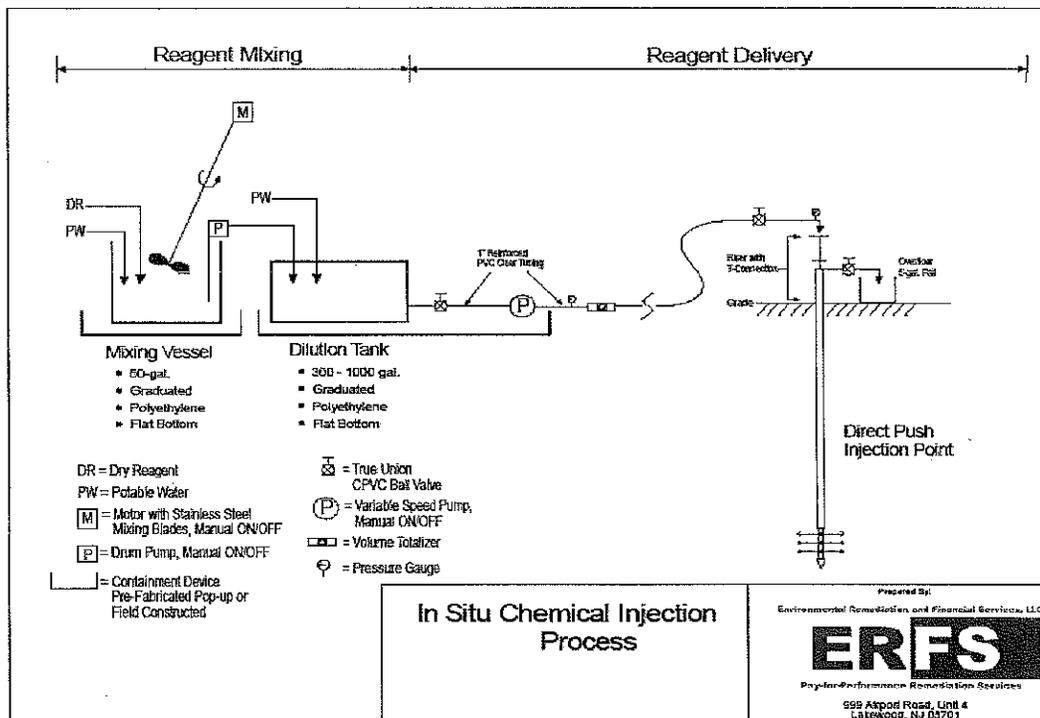
residuals. Reagent volume calculations are provided in Attachment A.

Injection Method - ERFS has conducted reagent delivery using direct push (DP) driven injection nozzles, fixed PVC wells, and propagations (sand-filled hydraulic fractures described below) at hundreds of sites. These delivery techniques can be used individually or in combinations to deliver sufficient treatment reagents to the areas and intervals above cleanup goals. Given the site setting, all of these techniques can be implemented at the site and should be effective given the site soils and estimated hydraulic conductivity.

ERFS has found that actively re-circulating groundwater within the treatment zone has been very effective at other ISCO treatment sites. ERFS recommends incorporating some amount of re-circulating groundwater during all injection events to promote distribution and good reagent mixing. Groundwater will be extracted from target monitoring wells during each injection event and the recovered groundwater will be used for reagent mixing and re-injected in that local area (subject to approval). ERFS has been successful with this “drag and draw” approach at other project sites. Although VOC concentrations are high in groundwater relative to the treatment goals, those concentrations are small compared to the amount of oxidizing reagent that will be present in the mixing tanks. Total VOC concentrations will therefore be greatly reduced by mixing with reagents in the mixing tanks without lowering oxidizer concentrations significantly. Further, total VOCs in groundwater are not at high enough concentrations, nor will tank

residence time be long enough, to result in noticeable (e.g. visible or temperature increases, etc.) reactions in the mixing tanks.

### Example ERFs Reagent Delivery Schematic



ERFS proposes to conduct the pilot test injection event using direct push (DP) drilling and injection techniques. These techniques will be adjusted based on pilot performance and carried into the full-scale treatment. The specification sheet from the Geoprobe Company is included as Attachment B. Direct push injection will allow rapid application of a large reagent volume so that significant contaminant reduction can be realized early in the project. This approach also allows flexibility to treat various depths at one location without the need for multiple screened well points.

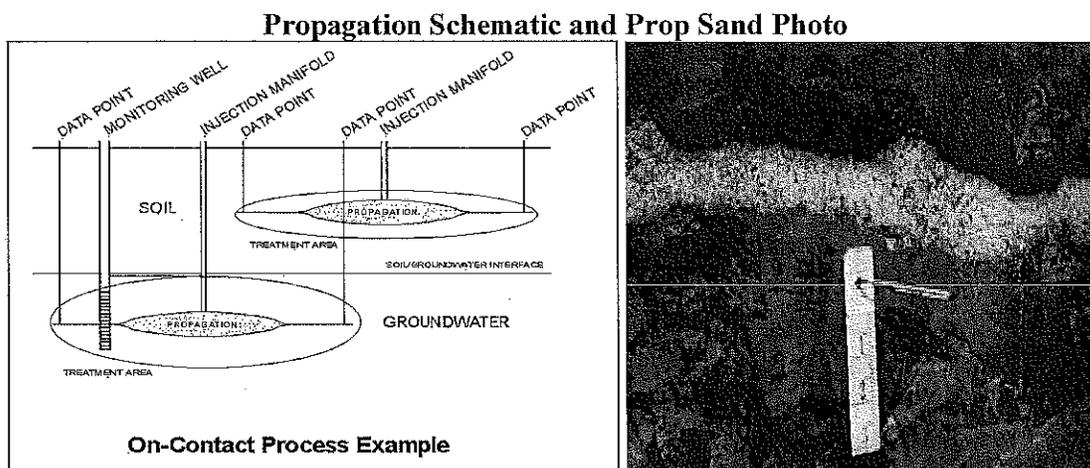
If pilot test results indicate that DP injection needs to be supplemented, then ERFs will install Propagations in selected areas and depths at the site to enhance reagent distribution. Propagation placement will be optimized by noting locations and depth intervals during the pilot phase injection event that may benefit from Propagation placement. Propagations are installed using a fracturing-like technology to create a disk up to 40 feet across and approximately 2 cm in average thickness. This can create a plane of approximately 1,000 square feet to infiltrate reagents into the subsurface independent of geological limitations. Final structure of a Propagation can be mapped using transits, sonics and down hole probes. A single Propagation

Mr. Howard Feiler, PE, PMP

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can do the work of multiple injection wells at a fraction of the cost. Propagations are filled like bladders at low pressure and are used to feed reagents into the groundwater and / or soil. The Propagations can also be converted to piezometers or recovery wells in the future.



**Work Scope, Cost, and Schedule.** ERFS will provide all labor, materials, equipment, travel, and subcontractors needed to complete the work. Empty reagent bags and PPE will be removed by ERFS for off site disposal. Hydrogen peroxide will be delivered in 55-gal drums that will be returned to the supplier for recycling. No other wastes such as drill cuttings or purge water are anticipated. Key work elements and assumptions are listed below:

#### Pilot Test

- Provide technical input to First Environment to assist in developing pilot testing plan for client and regulatory approval if needed.
- Install 4 to 6 DP injection points in the area around MW-5 while monitoring at MW-5
- Locations will vary to assess ROI of DP points;
- Monitoring to be done using down hole probe and data logger (DTW, DO, ORP, pH, temperature);
- Monitoring to also include field testing for catalyst, oxidizer, and vapor parameters during injection work;
- Injection of 50 to 150 gallons reagents at 3 to 5 depth intervals at each DP locations (150 to 750 gallons to be injected – actual quantities TBD in pilot test);
- First Environment will collect all pre and post injection samples;
- Includes data analysis and recommendations for full scale treatment;
- ERFS assumes that access will be provided as needed M-F, 7 a.m. to 7 p.m. during the treatment effort;
- ERFS assumes that water is available via fire hydrant within 200 ft of all work areas.

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- ERFS will obtain permits or pay fees if needed to access hydrant water;
- Duration will be ~5 days on site to complete injection work and monitoring;
- **Cost - \$24,500 lump sum**

#### Full Scale Treatment

- Provide technical input to First Environment to assist in developing full scale work plan for client and regulatory approval if needed.
- Install injection points and monitor:
  - Onsite Treatment Areas (injection interval is 17 ft down to 25 ft bgs)
    - MW-2, 800 square feet (sf), ~12 DP Locations;
    - MW-4, 1,500 sf, ~20 DP Locations;
    - MW-5, 800 sf, ~12 DP Locations;
    - MW-6, 1,500 sf, ~20 DP locations.
  - Offsite Treatment Areas (injection interval is 17 ft down to 25 ft bgs)
    - MW-13 and MW-15, 10,000 sf, ~80 DP Locations
- Inject 115 gallons at four depth intervals, or approximately 460-465 gallons per location, or for 144 locations, a total of 67,000 gallons of catalyzed peroxide reagents;
- Monitoring to be done using down hole probe and data logger (DTW, DO, ORP, pH, temperature);
- Monitoring to also include field testing for catalyst, oxidizer, and vapor parameters during injection work;
- First Environment will collect all pre and post injection samples;
- Includes data analysis and recommendations;
- ERFS assumes that access will be provided as needed M-F, 7 a.m. to 7 p.m. during the treatment effort;
- ERFS assumes that water is available via fire hydrant within 200 ft of all work areas. ERFS will obtain permits or pay fees if needed to access hydrant water;
- Duration will be ~3 weeks to complete injection work and monitoring;
- **Cost - \$120,500 lump sum**

This estimate remains in effect for 90 days. The work product and stated costs of this quotation is proprietary information for use by the receiver and associated client. Distribution of this information to the public domain, third parties, outside consultants, or competitive parties is strictly prohibited by law and standard business practice. If there is need to transfer this information, written permission is required.

Mr. Howard Feiler, PE, PMP  
August 17, 2012  
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Please call me at (904) 280-2596 if you need any additional information or have any questions or comments regarding this estimate.

Sincerely,

*Ron Adams*

Ronald F. Adams, P.E., LSRP  
Executive VP Remediation

Attachments -Calculations  
-Geoprobe Tool Cutsheet

# Provan Ford DA Oxidizer Calculations

## ① Moles of Contaminants

Well	Total VOC Mg/L	Moles CVOC	Total BTEX (Mg/L)	Moles BTEX
MW-2	115	0.1	33	0.04
MW-4	365	0.6	5	0.02
MW-5	1	<0.01	2,280	3
MW-6	116	0.2	20	0.05
<del>off site</del> MW-13	248	333 avg	—	3.7
MW-15	417		—	

4.6

3.11

7.71 moles  
Total

\* Less than 1 drum of 35%  
hydrogen peroxide needed by molar  
demand

(2)

### (2) Soil Oxidant Demand

$$\text{Total all areas} = 14,600 \text{ sf}$$

$$\text{Vol all Areas} = 248,200 \text{ cf}$$

$$= 9,193 \text{ cy}$$

$$\text{Soil Mass} = 10,433,593 \text{ kg}$$

Typical SOD is  $< 1 \text{ g Oxidant/kg Soil}$

$$\begin{aligned} \text{SOD} &= \frac{1 \text{ g H}_2\text{O}_2}{\text{kg Soil}} (10,433,593) = 22,982 \text{ lb} \\ &\quad \text{100\% H}_2\text{O}_2 \\ &= 67,593 \text{ lb} \\ &\quad \text{34\% H}_2\text{O}_2 \\ &= 135 \text{ drums} \end{aligned}$$

### (3) Pore Volume (to obtain good mixing)

$$\begin{aligned} \text{Total PV} &= 14,600 \times 17 \times 0.3 \times \text{Conversion} \\ &= 556,961 \text{ gal} \end{aligned}$$

$$\begin{aligned} 10\% \text{ Total PV} &= 55,696 \text{ gal to be injected} \\ &= \sim 105 \text{ drums of 34\% to be} \\ &\quad \text{injected} \end{aligned}$$

$$(4) \text{ Avg of 2+3} = \frac{135 + 105}{2} = 120 \text{ drums}$$

3

Total Reagent Vol

120 drums @ 34%  $\Rightarrow$   $\sim$  45,000 gal @ 5%

Iron Needed  $\Rightarrow$   $\sim$  12,000 gal

67,000 gal

Reagent Vol / DP Location

$= \frac{67,000 \text{ gal}}{144} = 465 \text{ gal Location}$

$= 116 \text{ gal / interval / location}$   
if 4 intervals / point



Geoprobe Accessories

>> [Tools Menu](#)

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Video

● [Pressure Activated Injection Probe](#)

The Pressure-Activated Injection Probe allows for either top-down or bottom-up injection of remediation materials when using any Geoprobe® grout or injection machine. The probe allows materials to be injected laterally into the subsurface. Unlike conventional injection methods, this probe ensures accurate placement of the material into the intended injection interval. A key feature of this probe is that it acts as a backflow preventer, keeping injection material IN the ground and not ON the ground! The probe is available for use with 1.5 in. probe rods (21479) and with 1.25 in. probe rods (18735).



Pressure Activated Injection Probe

For use with:

- [Geoprobe® Grout & Injection Machines](#)



Environmental Remediation and Financial Services, LLC



Pay-for-Performance Remediation Services

**ENVIRONMENTAL  
REMEDIAION and  
FINANCIAL SERVICES, LLC**  
2150 Highway 35, Suite 250  
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Fax (732) 974-3571  
[www.erfs.com](http://www.erfs.com)

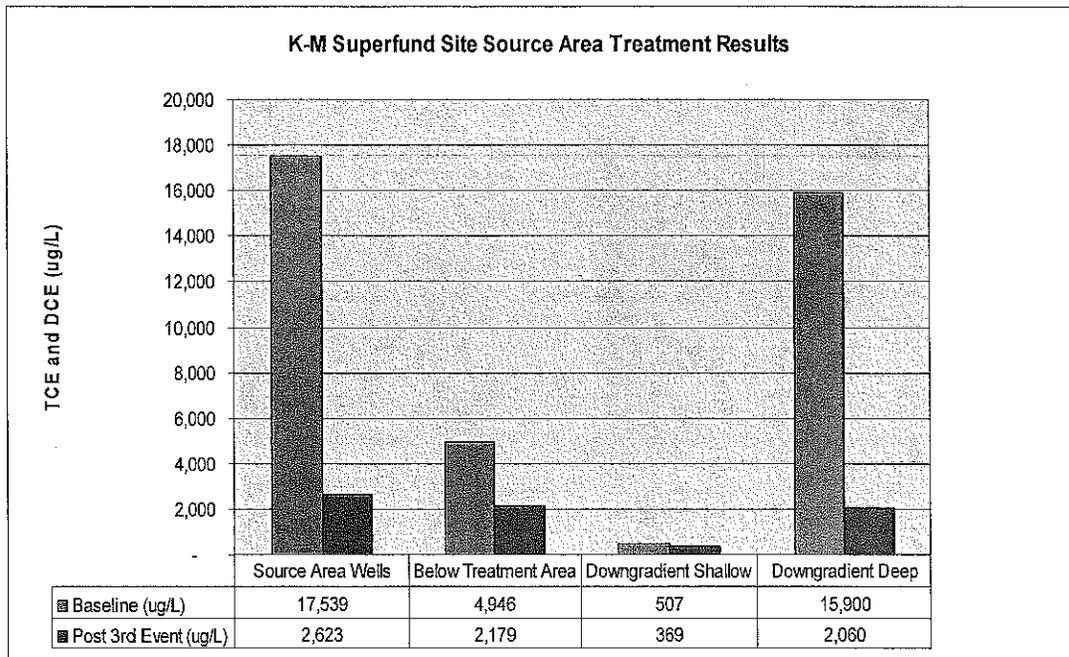
## Chlorinated VOC Site Cleanup Examples

ERFS has successfully applied in-situ remediation techniques under Pay-for-Performance contracts at chlorinated solvent and petroleum sites large and small. In all cases, ERFS' performance goals were aligned with the Site Owner's strategy for the site. ERFS is based in New Jersey with offices in the Southeast and performs projects across the U.S.

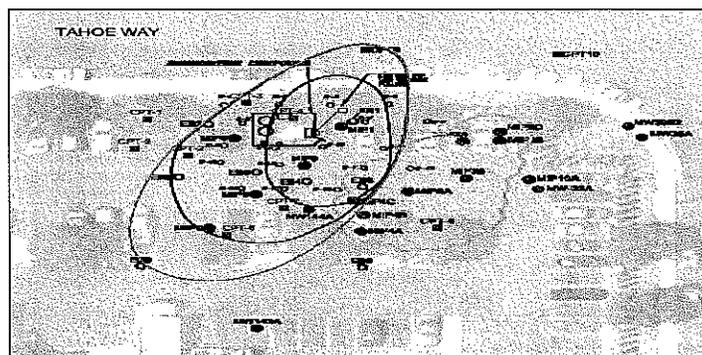
*Army Corp & EPA - Pay for Performance, K-M Superfund Site Source Area Cleanup, New Jersey*



ERFS replaced the previous in situ treatment subcontractor, evaluated the planned treatment, and re-designed the treatment to incorporate iron activated persulfate followed by peroxide activation several weeks later. Over 25,000 lbs of sodium persulfate were injected in three weeks using direct push injection methods. Total treatment events (persulfate plus peroxide) to date include three events - two full treatment events and one polishing event totaling over 65,000 gallons of reagents injected into the source area. In addition to large TCE and DCE reductions in the shallow source area, significant reductions were measured in the deeper zone below the treatment area and in the deeper zone downgradient from the source area, as illustrated in the chart below. Progress data demonstrated that the source area now meet goals. Confirmation sampling has been reviewed and accepted by EPA. Wells have been abandoned and the final report (RACR) will be submitted 2<sup>nd</sup> Quarter:



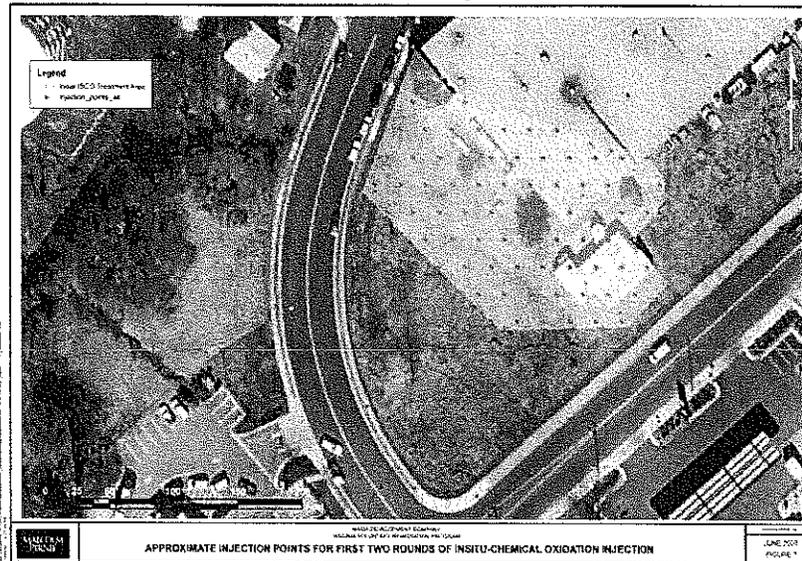
**Semi Conductor Facilities, Northern California** – ERFs is active at three semi-conductor sites contaminated with chlorinated ethene and chlorobenzene compounds. ERFs completed three treatments at one site that has been undergoing ozone sparging treatment after the site owner determined that source area in situ chemical oxidation treatment was preferred over sparging system upgrade/repair/expansion. The second site is no longer owned by the responsible party and ERFs is conducting in situ chemical oxidation treatment down to 75 ft deep around the newly developed office park. The third site is an active semi-conductor research lab where ERFs conducts treatment during after-hours and on weekends in and around lab work stations. Multiple treatments have been completed through 2009 and monitoring data will be collected during 2011.



**Manufacturing Site, Virginia Beach, VA** – ERFs provided recommendations to revise the injection design specification for the site. Upon approval, ERFs applied potassium permanganate per the revised specification. Site soils are described as fine to medium sand with some silt, depth to water is approximately 10 ft bgs. ERFs injected approximately 2,500 lbs of permanganate dissolved in 11,000 gallons of dilution water

into 60 direct push borings across the site. The first injection was completed in August 2007 with a second event completed in February 2008. Groundwater samples collected in mid to late 2008 lead to a third polishing treatment and the site wells now meet risk-based closure goals.

### ERFS Direct Push Injection Zone



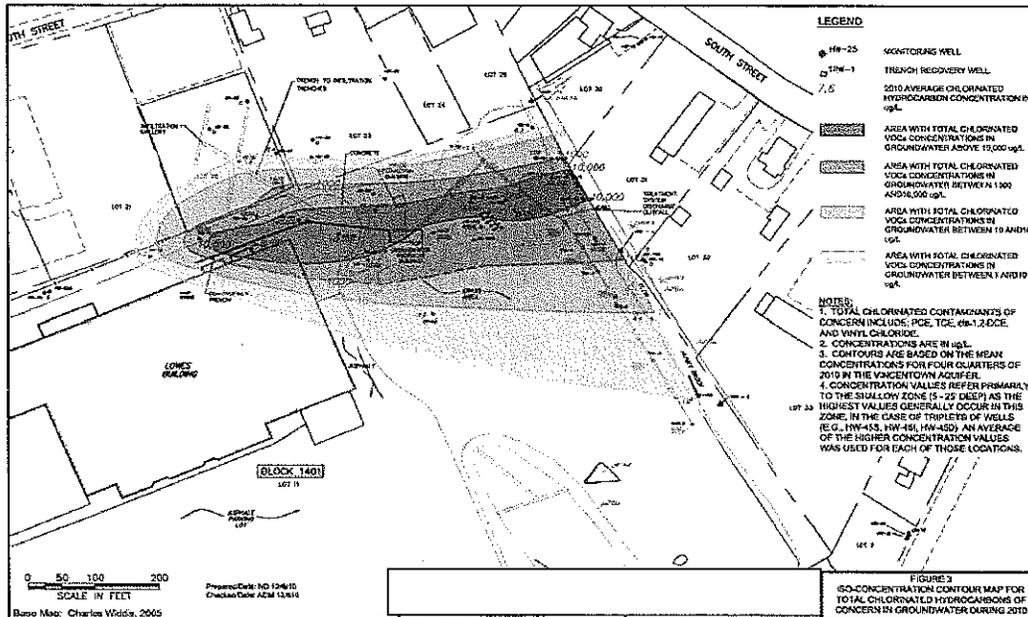
**Former Aerospace Defense Contractor Focused Feasibility Study, Los Angeles, CA.** ERFS performed a focused evaluation of remedial action alternatives to address 1,4-dioxane contamination in the deep (>100 ft deep) sandy aquifer. ERFS developed a unique combination of groundwater recirculation combined with chemical oxidation to maintain hydraulic control and rapidly lower contaminant concentrations on the site. A remedial alternatives selection will be determined by the site client and the regulatory stakeholders.

**CVOC Mass Removal for MNA – Naval Station North Island, CA** - ERFS installed propagations and other injection points throughout a 30,000 square foot plume within this former military landfill. Using sequential applications of modified Fenton’s and potassium permanganate, the CVOCs plume area was reduced to less than 10,000 square ft and achieved significant source area mass reduction. Anaerobic biological activity was documented within 60 days of treatment completion. Site is currently in MNA status.

**Former Aerospace Manufacturer, New Jersey** – Under a national contract to close down active, long-term remediation systems, ERFS evaluated this mixed plume (CVOC and petroleum) site that has been redeveloped as a chain hardware store. The current pump and treat system costs approximately \$500,000 per year for O&M and is not protective of the downgradient surface water body. ERFS evaluated historical data, identified the “old” source area (former chemical waste pit that was not fully remediated) as the hidden problem, and then developed an assessment program for the owner’s consultant to implement. Data collection now indicates that there remains an upper petroleum source

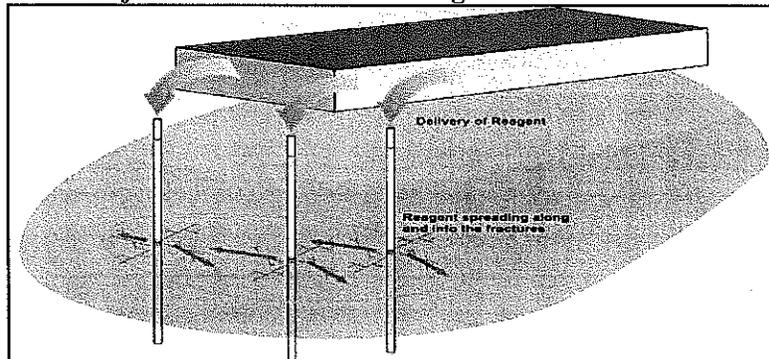
zone (LNAPL and high dissolved concentrations) and a much deeper, previously unknown DNAPL area. Work plans are in progress for source zone treatment in 2012.

### Upper and Lower Source Zone Depiction Following ERFs Data Collection Recommendations



**Former Aerospace Manufacturer Site, New England – High CVOC approaching DNAPL (>100 mg/L)** - ERFs assessed site conditions and developed the conceptual and then detailed technical approaches to treating portions of the site at a time to control overall project spending and ultimately meet closure goals sooner. The first phase consists of addressing TCE in bedrock groundwater at this long-term pump and treat site. The treatment area is also impacted by total and hexavalent chromium, making in situ oxidation difficult. ERFs has directed injection trench installation, developed all work plans, and has conducted two activated persulfate treatments at the site. Results from the first injection event are summarized below. Monitoring data after the second event will be collected in the Spring of 2011. Initial data indicates an over 90% reduction of TCE and other VOCs.

#### Injection Event 2 – Polishing via Bedrock IWs



**Former Aerospace Manufacturer Site, New England  
Injection Event 1 Results**

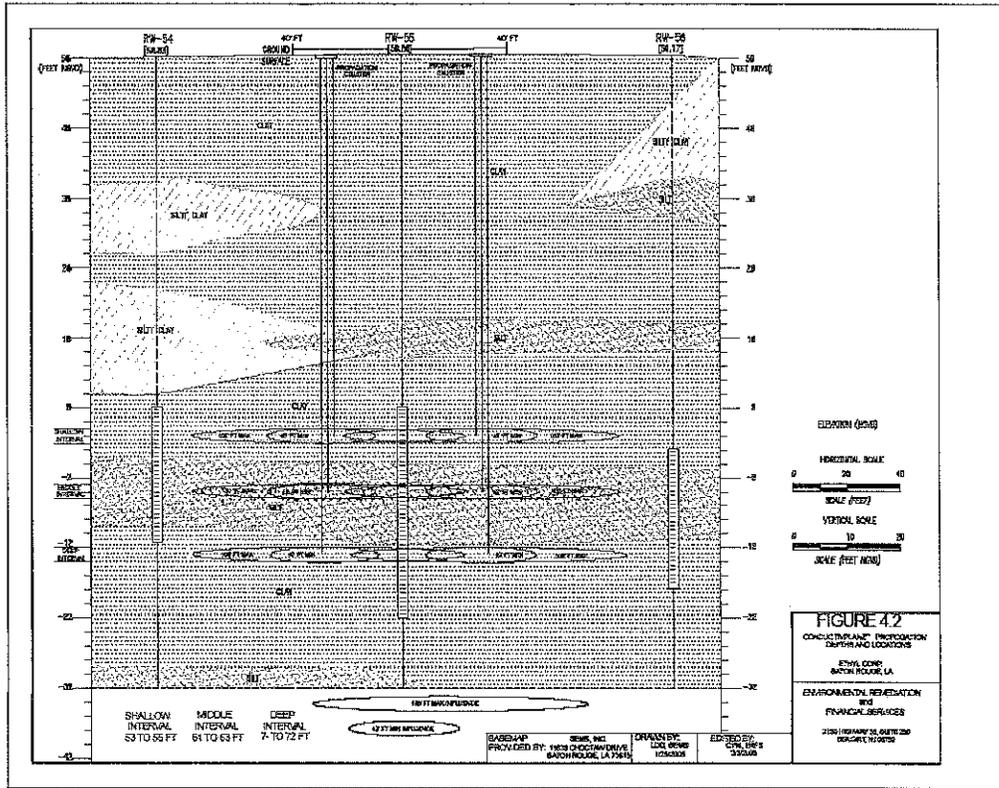
	Well ID	Baseline TCE ug/L	One Year After 1st Treatment TCE ug/L	Reduction
Hot Zone	BW-1	51,000	15,000	- 94.6%
	BW-4	230,000	2	
	BRW-1	23,000	7,500	
	BRW-2	27,000	120	
	OSW-3B	23,000	38	
	BW-24	72,000	180	
	Avg. Hot Zone	71,000	3,807	
Perimeter Zone	BW-2	1,500	18	- 97.8%
	OMW-3D	990	30	
	BMW-3	100	3	
	OIP-2D	160	9	
	Avg. Perimeter	688	15	

**CVOC in Bedrock – Watervliet Arsenal - Watervliet, NY** - ERFs contracted to conduct multiple oxidizer injections into the bedrock aquifer beneath buildings at the Watervliet Arsenal in New York. The prime consultant identified discrete vertical intervals where fractures allowed for migration of contaminants (chlorinated compounds). These zones were targeted using ERFs' vertical isolation techniques to inject oxidizer.

**New Jersey Dry Cleaners** – ERFs is conducting Pay-for-Performance cleanup at this dry cleaning facility in Bayshore, NJ to treat impacted soils and groundwater around large utility conduits. Site soil is described as silty sand with saturated conditions approximately 4 ft bgs. Following limited soil removal, treatment began using catalyzed peroxide followed by iron and peroxide initiated sodium persulfate. Unsaturated soils have been treated from starting concentrations ranging from 10 mg/kg to 46 mg/kg in multiple locations. Site soil now meets regulatory action levels and the owner is seeking an NFA for soil.

**DNAPL in Clay – Chemical Manufacturer in Baton Rouge.** ERFs developed the assessment program utilizing existing wells and passive diffusion bailers to determine vertical distribution at this active pump and treat site. Recovery wells extended to >90 ft deep and extracted large volumes of highly impacted groundwater. ERFs determined that 99% of recovered contaminants resided within a 55 to 70 ft bgs zone of permeable sand stringers within the bulk clay. ERFs installed a series of propagations (hydraulic-fracture-installed sand lenses) at multiple elevations around a key recovery well and then established a re-circulation zone to create conditions needed for anaerobic degradation.

Dehalogenating microbes were then applied after reducing conditions were established. Monitoring data is being collected by the owner's local consultant and is expected to continue into 2010.

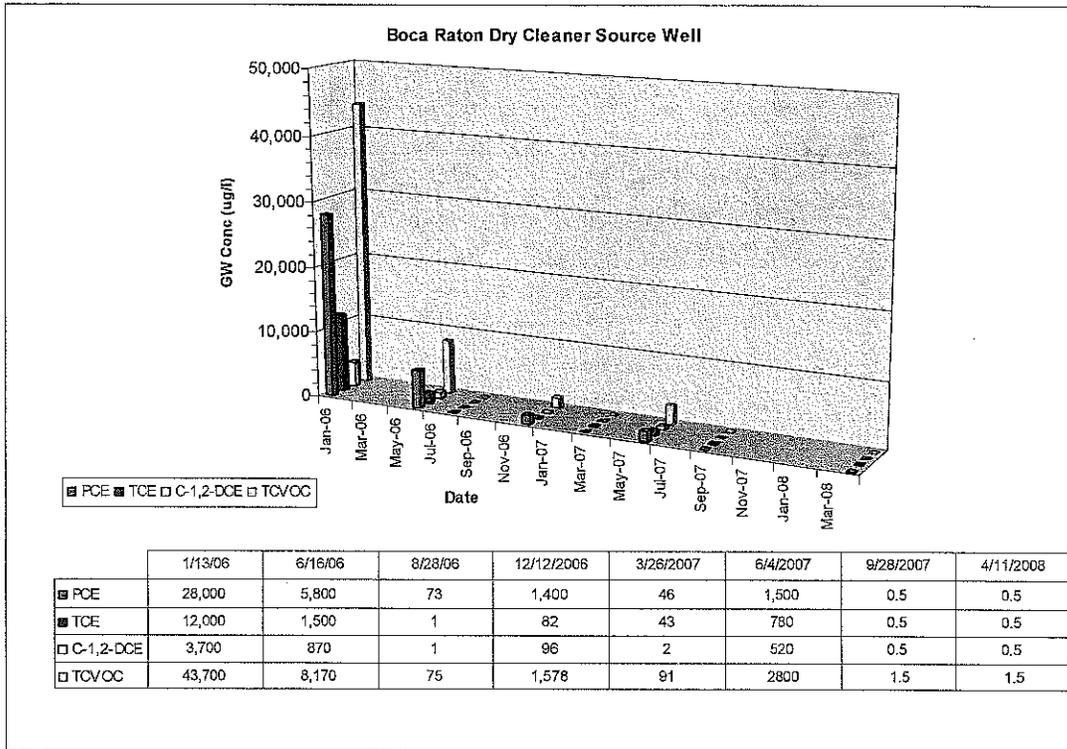


**NFA (SRCO) - FDOT Parcel 120, Jacksonville, FL** - Following source removal by the prime contractor, ERFs installed propagations and vertical injection points to cover an approximately 15,000 square ft residual plume. Baseline CVOC (PCE, TCE, and DCE) concentrations averaged 300 ug/l. After multiple peroxide and permanganate treatments under our Pay-for-Performance contract, all site monitoring wells met state groundwater cleanup standards for at least two quarters of monitoring (many for more than 4 quarters). An expedited SRCO was issued to accommodate the impending construction schedule around the site.

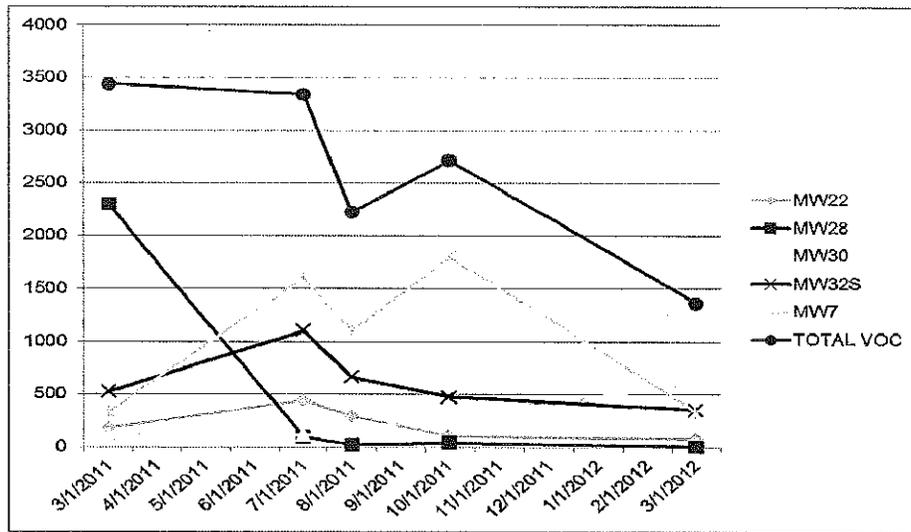
**NFA (SRCO) - Jacksonville, FL Warehouse.** Following waste solvent UST removal and several years of groundwater monitoring, a residual CVOC groundwater plume remained at the site. Working under a Pay-for-Performance contract, ERFs prepared the Remedial Action Plan, installed three injection wells, and conducted multiple additions of oxidizing reagents. Vinyl chloride decreased from 110 ug/l to below detection limits (BDL) within months and all target compounds have remained BDL for four quarters of monitoring. Florida DEP has granted closure for the site.

Sample ID	Date	Results (ug/L) and GCTLs				
		Vinyl Chloride 1	1,1-DCA 70	c-1,2-DCE 70	Total VOC	% Change
MW-13	Apr-03	2.5	4.3	0.51	7.31	
	5/28/2004	<1	<1	<1	0	100%
	10/7/2004	<1	1	<1	1	86%
	3/1/2005	<1	<1	<1	<1	100%
MW-17	Apr-03	110	48	5.1	163.1	
	5/28/2004	4.2	9.6	1.2	15	91%
	10/7/2004	<1	2.7	<1	2.7	98%
	3/1/2005	<1	<1	<1	<1	100%
MW-18	Apr-03	0.52	22	2.9	25.42	
	5/28/2004	<1	<1	<1	0	100%
	10/7/2004	<1	12	<1	12	53%
	3/1/2005	<1	<1	<1	<1	100%

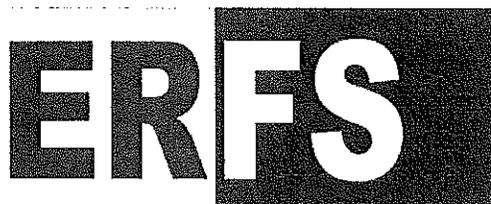
**Boca Raton, FL Dry Cleaner** - ERFS assisted with Remedial Action Plan preparation and approval, installed propagations and vertical injection points, and conducted multiple peroxide treatments to achieve 70% CVOC reduction. Midway through the project, the site owner discovered a former lint trap with CVOC impacted sludge within and impacted soil beneath it. After removing the lint trap and impacted soil, the owner installed a source area monitoring wells. ERFS re-initiated groundwater treatment in early 2006, added supplemental injection wells in early 2007, and has achieved 99.8% source area groundwater reduction while surrounding wells continue to decrease. Polishing and monitoring continued into 2008.



**CVOC Source Area Treatment**—Former Aerospace Manufacturer, New England. ERFs has completed two treatment events to address CVOC in groundwater, achieving >70% concentration reduction so far. The 8,500 square ft source area is impacted with PCE, TCE, DCE and VC within an interval of finer grained materials from 40 to 60 ft bgs. Direct push injection was used in the initial treatment event followed by PVC injection well installation. Modified fenton's treatment followed by sodium persulfate activated with both iron and peroxide have been effective in treating CVOC. Treatment and monitoring will continue through 2012.



Environmental Remediation and Financial Services, LLC



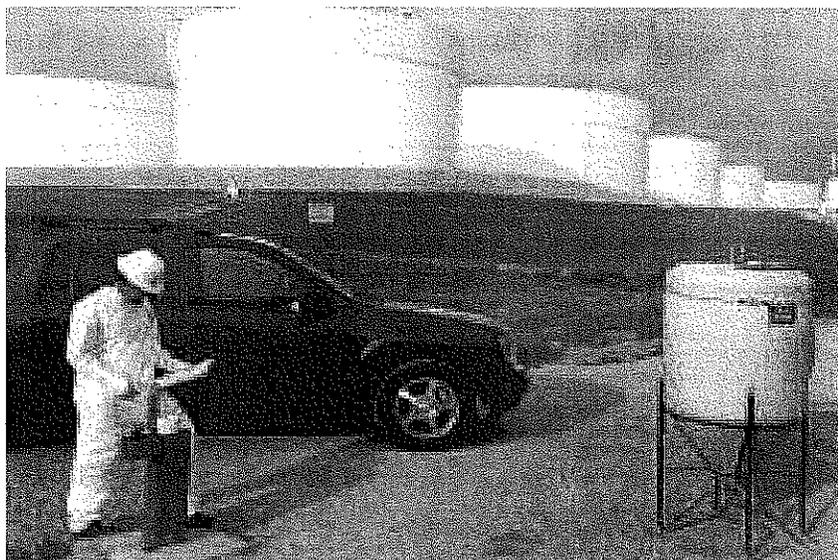
Pay-for-Performance Remediation Services

**ENVIRONMENTAL  
REMEDIAION and  
FINANCIAL SERVICES, LLC**  
2150 Highway 35, Suite 250  
Sea Girt, NJ 08750  
(732) 974-3570  
Fax (732) 974-3571  
[www.erfs.com](http://www.erfs.com)

## Petroleum Site Cleanup Examples

ERFS has successfully applied in-situ remediation techniques under Pay-for-Performance contracts at chlorinated solvent and petroleum sites large and small. In all cases, ERFS' performance goals were aligned with the Site Owner's strategy for the site. ERFS is based in New Jersey with offices in the Southeast and Southwest and performs projects across the U.S.

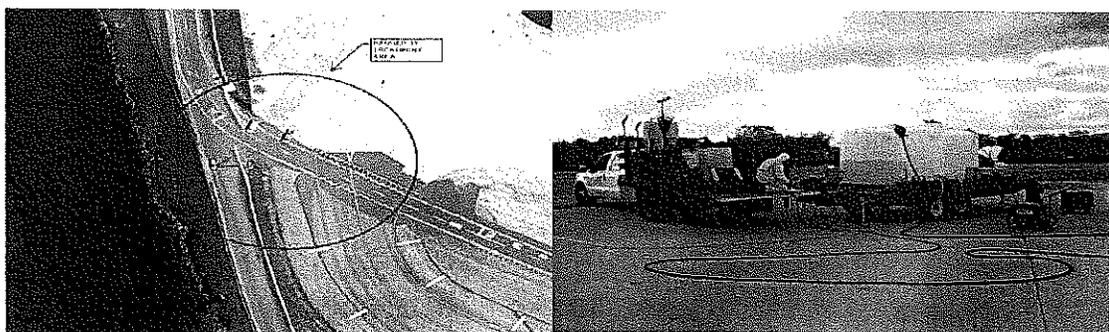
### Large Petroleum Sites



*NFA at Former Bulk Storage Facility in Baltimore, MD* – ERFS conducted Pay-for-Performance cleanup at this 4 acres site near the Baltimore Harbor. The subject parcel was once part of a large petroleum processing and storage facility dating back to the late 1800s. ERFS removed several feet of mixed petroleum LNAPL at the site over a 4 month period to achieve NFA status from the MDE which allowed lifting of deed restrictions and redevelopment of the site. The property is currently developed as a bank and office building.

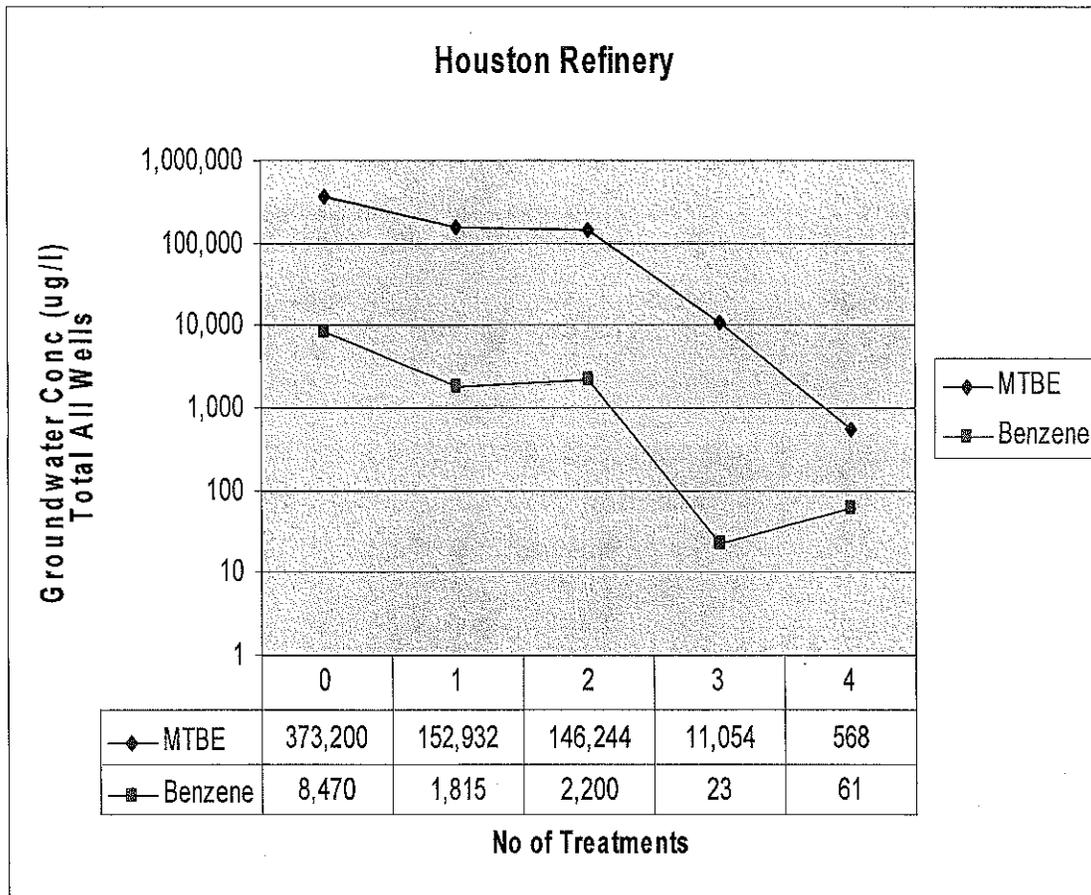
Dates	LNAPL Thickness (ft)	
	MW-2002	MW-2003
4/94	6.61	3.99
12/95	6.31	1.68
5/96	9.27	0.39
3/97	10.40	0.97
3/98	2.06	0.00
12/99	4.12	No data
5/00	6.80	0.21
5/01	2.83	0.42
<b>Initiated On-Contact Remediation Process®</b>		
6/01	0.28	0.18
7/01	0.11	0.57
8/01	0.05	0.06
9/01	0.00	0.00

**JFK International Airport Hanger-19 ISCO Treatment** - In early October 2010, ERFs was retained as a subcontractor to conduct in-situ chemical oxidation (ISCO) within a sensitive air-side area of the JFKIA, Jamaica, NY. The treatment area was located adjacent to Hanger 19 at the western end of one of the airport's main runways. The NYSDEC-approved workplan (prepared by others for the PANYNJ) called for the application of 76,200 gallons of treatment reagents (dilute sulfuric acid and hydrogen peroxide) into 20 injection wells. Under a lump sum agreement, ERFs provided the skilled personnel, equipment and chemicals for the ISCO application.



In order to accommodate airport operations within the Hanger 19 ISCO treatment area, ERFs had to develop a technical execution plan that accommodated all PANYNJ operational and security requirements, while safely and efficiently completing the scope of work within the shortest possible timeframe.

**Houston, TX Refinery/Bulk Distribution Facility** - ERFs has completed three reagent applications to drop benzene and MTBE concentrations in groundwater by several orders of magnitude (97% to 99.5% decreases). The site consists of an approximately half acre affected area where LNAPL and high dissolved petroleum concentrations in groundwater were assessed. ERFs has made significant cleanup progress using a network of vertical and lateral injection devices. Currently, 8 out of 13 monitoring wells meet the MTBE closure goal and 11 of the 13 wells meet the benzene closure goal. The site owner is currently conducting monitoring to collect data to determine the best strategy for site closure. Total benzene and MTBE concentrations for all site wells are shown in the figure below:



**NFA - Syracuse Airport Maintenance Hanger** – At a leased maintenance hanger, ERFs installed propagations and vertical injection points under the building slab and utility lines to complete multiple injections and achieve NFA conditions for soil and groundwater impacted by Stoddard Solvent and other petroleum compounds. Significant contaminant reductions were achieved after several treatment rounds. Polishing was completed by installing oxygen release compound.

**Truck Rack Remediation at Former Bulk Fuel Facility, Jacksonville, FL** - Soil and groundwater impacts above FDEP groundwater cleanup standards were encountered at

the former Truck Rack location at this former Bulk Storage Facility in an industrial area along the St Johns River. Impacted soil around the Truck Rack was excavated and disposed off site. An approximately 3,000 sq. ft. groundwater plume remained stretching from the Truck Rack to the property line toward the River.

Site soils are fine to medium sand with a depth to groundwater from 3 to 5 feet bgs. The site is currently used to store imported automobiles prior to distribution. Proposed cleanup goals were 55 ug/l benzene at the source area and 5 ug/l benzene at the property line based on risk analysis results. Working under a Pay-for-Performance contract, ERFS assisted the prime contractor in preparing the Remedial Action Plan and obtaining approval. ERFS installed 10 injection wells using direct push methods to eliminate derived waste generation.

A second, historical Truck Rack was encountered in late 2004 within 10 feet of the remaining impacted mid plume well during exploratory excavation by the owner. ERFS designed an infiltration system in the field and worked with the excavation contractor to construct an arrangement of lateral slotted pipes so that excavated soil could be returned to the excavation and treated in-situ. Following two localized treatments into the excavation, soil and groundwater were found to meet goals. NFA has been approved for the site.

**Former Bulk Fuel Facility  
BTEX Concentrations in Groundwater (ug/l)**

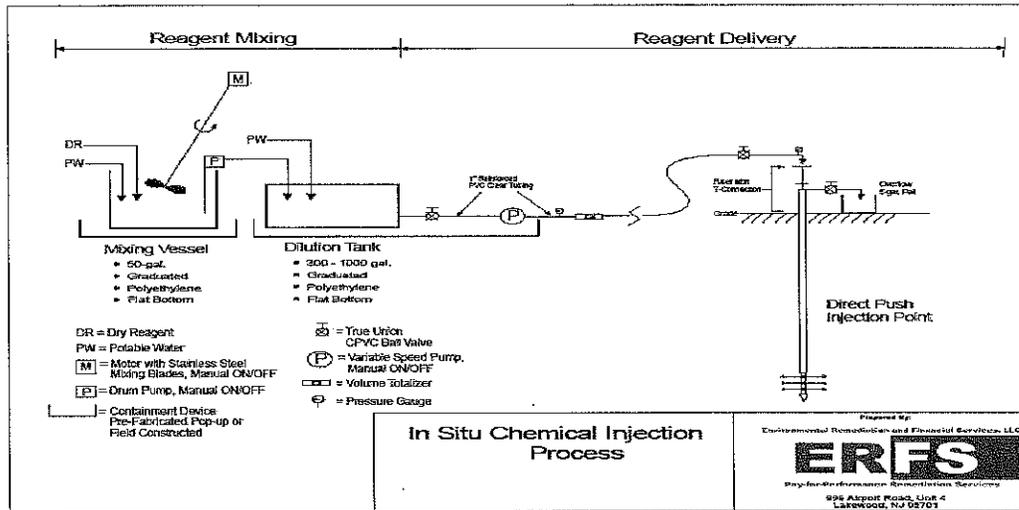
	11/1/02	6/1/03	2/1/04	5/1/04	11/1/2004
Source Area	2000	27	ND	ND	ND
Mid-Plume	260	88	221	251	ND
Property Line	6.5	27	ND	ND	ND

***Willow Grove ANG Base LNAPL Site, PA*** - ERFS treated several acres of LNAPL jet fuel at an off-base spill area for Geotrans (Tetra Tech Company) under contract to the USAF. ERFS conducted pilot testing and assisted in developing the full-scale approach. Full scale treatment involves 400 to 500 well injections and is approximately 35% completed to date. Additional treatment is pending government funding for the project

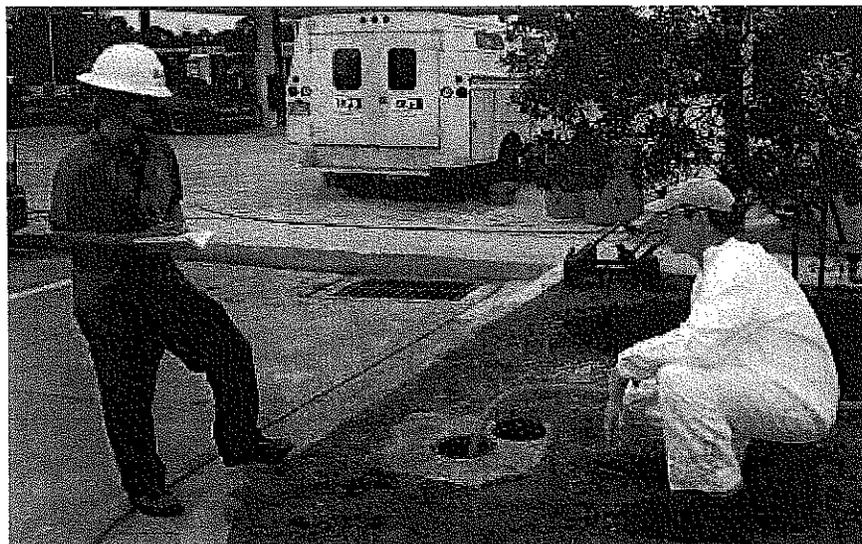
***Defense Energy Supply Center, Jacksonville, FL*** - ERFS is working under a Pay-for-Performance contract at this local federal facility. Two separate petroleum impacted sites, one a pump station, the other a pipeline area. ERFS is delivering dilute reagents via gravity feed to a combination of vertical wells and lateral trenches to degrade residual petroleum in soil and groundwater. Progress samples indicate that one site is below method detection limits for three quarters and the other site has two wells needing minor polishing treatments. The site prime contractor recently removed contaminated soil in a newly discovered impacted area within the treatment zone.

***Large Volume Direct Push Injection, Gas Station, Inverness FL*** - ERFS implemented injection of over 45,500 gallons of catalyzed peroxide reagents over a two week period. The site consultant identified areas and vertical zones needing remediation and ERFS

developed the injection plan to implement treatment. Injections were conducted at multiple intervals from 40 ft bgs to as shallow as 8 ft bgs using a direct push drilling rig, injection nozzles, and specialized pumping equipment. All work was conducted at night to avoid operation impact to the site owner. Based on quarterly data review, the primary consultant will recommend either additional treatment if needed, or continued quarterly monitoring.



**Retail Gas Stations and Convenience Stores**



***Pennsylvania USTIF sites*** – ERFS has conducted Pay-for-Performance cleanup at over a dozen program sites. From eliminating LNAPL to reducing high groundwater and soil concentrations to closure levels, ERFS has successfully completed all projects within the program. All sites are either in closure monitoring or have been closed.

*New Jersey Residential Heating Oil Sites* – ERFs is currently active under Pay-for-Performance contracts at over 75 residential sites. Approximately 20% are closed after reaching NFA criteria; 10% in closure monitoring; 20% in initial design; 20% permitted and ready for initial treatment; and 30% in active treatment making progress towards closure goals.

*Major Oil Company Sites – Metro NY and NJ* – Contracted directly with either Major Oil companies or their consultants, ERFs has performed direct push pressurized injections or follow up polishing treatments into PVC wells. At over a dozen project sites from Long Island, to New York City, to the I-95 corridor through New Jersey, ERFs has reduced plume sizes and concentrations in support of monitored attenuation management plans for these sites. Work was conducted at high traffic stations in soils ranging from sand and silt to clay and bedrock.

*NFA (SRCO) – Carnes Texaco, Dunedin, FL* - ERFs applied in-situ remediation techniques to achieve state groundwater cleanup standards for BTEX and lead at this former gasoline station site. The prime contractor had previously reached goals for soil and groundwater for a portion of the site after many years of pump and treat and AS/SVE operation. However, one area of residual BTEX and dissolved lead remained, preventing site closure. With baseline concentrations of 450 ug/l for xylene, 40 ug/l for ethylbenzene, and 71 ug/l for dissolved lead, ERFs achieved reduction to below detection limits (BDL) within 6 months under a Pay-for-Performance contract. After four additional quarterly monitoring events, FDEP has verified and granted the SRCO (i.e., NFA) for the site.

*NFA Former Automotive Repair, Brick, NJ* – Under a Pay-for-Performance contract, ERFs installed propagations and vertical injection wells followed by successive treatments using chemical oxidizers. Within three treatments, all site LNAPL (petroleum products) was eliminated and has not re-occurred for over a year. Polishing treatments effectively treated TPH in soil so that no soil samples exceeded the state cleanup criteria of 10,000 mg/kg and none exceeded individual COC limits. The state DEP issued a NFA for the site.

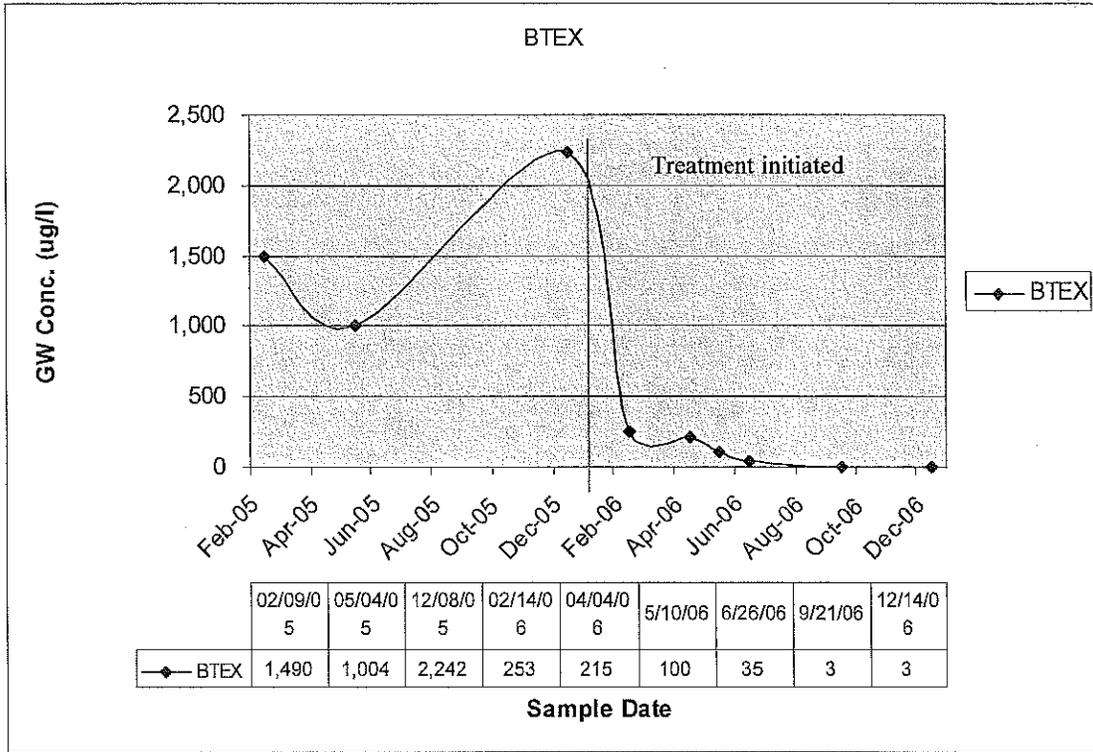
Boring ID	Depth (ft)	TPH (mg/kg)		
		Baseline	Final	%Reduction
2	9.5-10	17,800	2,749	85%
3	10.25-10.75	45,300	542	99%
5	10.25-10.75	28,000	8,630	69%
6	10-10.5	39,100	2,130	95%
7	10.25-10.75	25,400	9,010	65%
10	9.75-10.25	20,600	326	98%
<b>Total:</b>		<b>176,200</b>	<b>23,387</b>	<b>87%</b>
<b>Average:</b>		<b>29,367</b>	<b>3,898</b>	<b>87%</b>

***NFA (SRCO) – Payless Store #10, Land O’Lakes, FL*** - ERFS evaluated site conditions and recommended replacing existing injection wells installed by the previous site contractor for oxygen compound injection since the screen intervals did not intersect the water table where residual petroleum impacts were located. With a baseline concentration of 120 ug/l for total naphthalene, and several compounds 2 to 3 times their state groundwater cleanup standards, ERFS achieved reduction to BDL within 3 months under a Pay-for-Performance contract. After four additional quarterly monitoring events, FDEP has verified and granted the SRCO for the site.

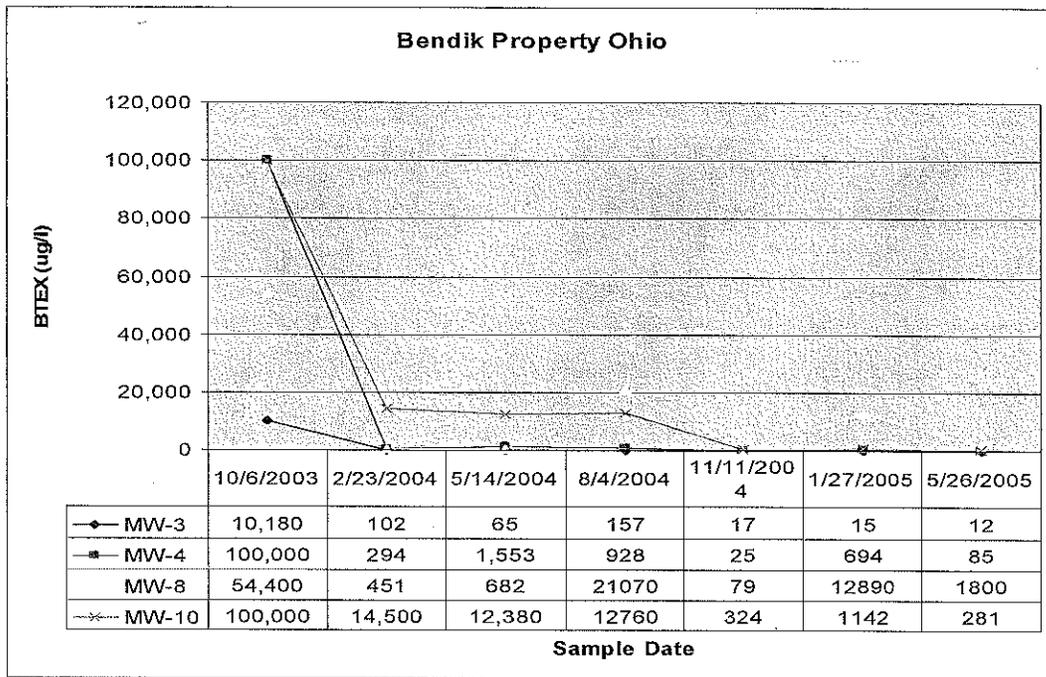
***NFA (SRCO) – Jumpin’ Jims, Ocklawaha, FL*** - Following source removal of impacted soil and LNAPL followed by dewatering, petroleum compounds were found to be below state groundwater cleanup standards in all site wells. Persistent dissolved phase lead at 25 to 50 ug/l was measured at a cross gradient well, preventing site closure. ERFS successfully treated dissolved lead in-situ using reagents formulated to form insoluble lead complexes. ERFS achieved reduction to BDL within 6 months under a Pay-for-Performance contract. After four additional quarterly monitoring events, FDEP has verified and granted the SRCO for the site.

***NFA (SRCO) – Orlando, FL Fire Station*** – Residual BTEX remained in the groundwater following removal of a gasoline UST. ERFS applied oxygen enhancing reagents to boost in-situ microbial activity in the treatment area groundwater. Site monitoring indicated that state groundwater cleanup standards were met for four quarters and FDEP granted the SRCO for the site.

***NFA (SRCO) - FDOT Naples, FL Petroleum Cleanup*** – ERFS is conducting Pay-for-Performance treatment to achieve state groundwater cleanup standards (GCTLs) in the remaining contaminated well at the property. Target well has met GCTL goals for one year and site closure has been approved by FDEP.



**Former Retail Gasoline Station in Ohio** – After three treatments in three months, the site owner collected samples which documented over 80% BTEX concentration reduction in groundwater and removal of LNAPL. Site soils are described as clayey silt overlying siltstone. Continued treatment has decreased concentrations by over 95% in groundwater. Site owner is currently evaluating soil concentrations to determine closure potential.



**FDEP Bundled PBC Sites – Ice Cold Air and Angel Property, Tampa, FL** - As a Pay-for-Performance subcontractor to the successful bidder, ERFS has assisted in Remedial Action Plan approval, installed injection wells, and conducted two chemical applications. Interim progress data indicates that all groundwater samples were below state groundwater cleanup standards. One site has been closed to NFA while the other has one well receiving polishing treatment. Confirmation sampling is to occur through 2012.

**Altamonte Springs, FL - Active Gasoline Station** - ERFS has conducted multiple reagent applications at this active gasoline station site near Orlando under a Pay-for-Performance contract. A significant portion of the site was near remediation completion after several years of operating a high vacuum extraction system to treat soils and groundwater. From 25% to 50% of the impacted area was noted to consist of clayey soils from grade to the water table while the remainder of the site consists of sandy soils. The primary contractor on the project identified high levels of residual petroleum in the clayey soils that was not being affected by the HVE system quickly enough.

As expected, dissolved BTEX concentrations increased in monitoring wells in the area of residual petroleum clayey soils (MW-22 and MW-24) after the first two treatments and are now on a downward trend. Other site wells have decreased significantly in BTEX concentrations. The prime contractor has determined that ERFS has met Pay for Performance contracted goals.

**Altamonte Springs Groundwater  
BTEX Concentrations in ug/l**

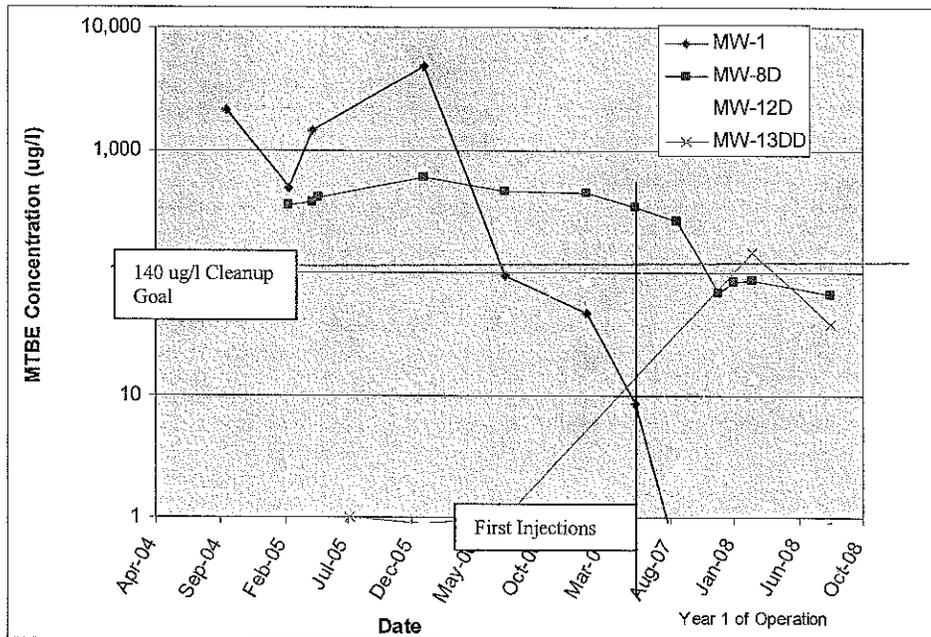
Well ID	Baseline	After 1st Treatment	After 2nd Treatment	% RED. From Baseline	After 3rd Treatment	% RED. From Baseline	After 4th/5th Treatment	% RED. From Baseline
MW-1R	717	10	18	97%	56	92%	68	90%
MW-3	6,160	2,530	97	98%	606	90%	520	92%
MW-3R	5,396	982	1,031	81%	1,562	71%	473	91%
MW-6	3,090	192	447	86%	172	94%	164	95%
MW-6R	84	9	1	99%	4	95%	54	36%
MW-22	3,035	8,360	8,020	-164%	2,490	18%	262	91%
MW-23	3,630	971	265	93%	934	74%	662	82%
MW-24	49	640	3,970	-8002%	2,321	-4637%	30	40%
<i>Total all wells</i>	<i>22,161</i>	<i>13,694</i>	<i>13,849</i>	<i>38%</i>	<i>8,145</i>	<i>63%</i>	<i>2,232</i>	<i>90%</i>

**West Palm Beach, FL Gasoline Station** – ERFS has assisted in LSRAP preparation and approval to allow modifying the SVE system so that treatment can be conducted very cost-effectively using existing infrastructure (lateral slotted SVE wells). Two treatments were conducted prior to the owner’s planned UST removal actions. Following UST removal, ERFS has conducted direct-push jetting of reagents across the remaining impacted area. Treatment results indicate over 75% contaminant concentration reduction has been achieved and polishing will continue through 2012.

**Live Oak, FL - BP Gasoline Station Site** – ERFS conducted a one-time injection into the Floridian Aquifer at the site prior to site demolition and well abandonment prior to a large soil excavation effort. Visual observations to 85 ft bgs in the ERFS treatment areas indicated no signs of residual LNAPL. Consultant has installed new monitoring and injection wells and ERFS has conducted two large area treatments into the Floridian Aquifer. Post-treatment data illustrated that remediation goals had been achieved for site groundwater both in the shallow and deep aquifers.

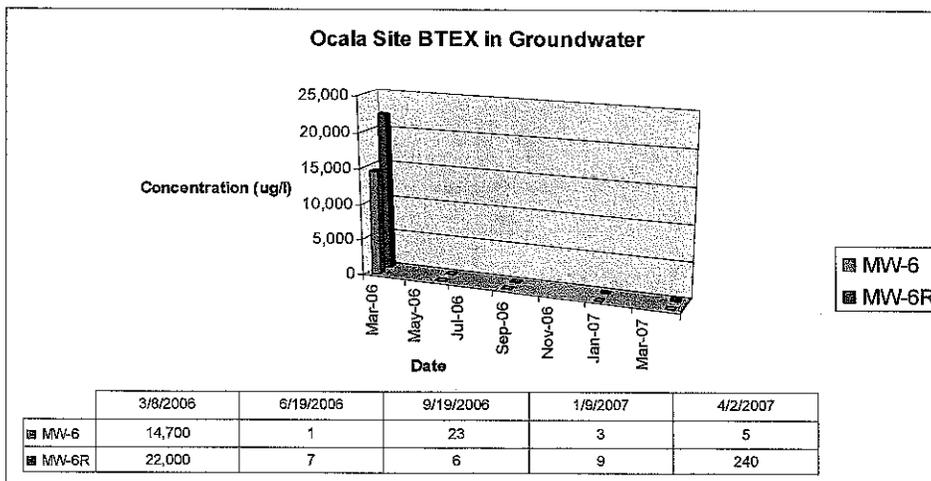
**FDOT Okeechobee, FL Petroleum Site** – ERFS has conducted one site treatment using vertical wells and direct injection techniques. Residual soil impacts below large radio tower and around former UST bed have resulted in persistent LNAPL sheen in wells. Lump sum by task treatments were conducted in late 2007 resulting in removal of LNAPL and reduction of dissolved BTEX concentrations to meet closure goals. The site is undergoing post remediation monitoring to attain NFA approval.

**New Port Richey, FL Convenience Store** – working for a national chain site owner on this non-program site, the prime consultant is using SVE to address upper soils while ERFS treats groundwater under a Pay-for-Performance contract. MTBE is the only contaminant of concern exceeding cleanup and monitoring only goals in groundwater. Treatment began in 2007 and the site is in a monitoring-only status.



**Former Gasoline Station Plant City, FL** – Currently developed as a hotel, the site has a history of high BTEX concentrations (>2,000 ug/l). ERFS is under a Pay-for-Performance contract to reach concentrations below NADCs so the site owner can implement a monitoring only plan. Treatment and monitoring are to continue through 2012.

**Roofing Manufacturer in Ocala, FL** – ERFS is treating a small residual area over a 30 ft interval behind this industrial facility and along the CSX railroad right of way. Treatment began in early 2006 and after three treatments BTEX concentrations have dropped over 99% and meet state cleanup goals. NFA has been approved for the site following post-treatment monitoring.



RESOLUTION NO.: 239 - 2013

OF

NOVEMBER 25, 2013

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN  
AS 255 BROADWAY (SECTION 35, BLOCK 2, LOT 4)  
AT PRIVATE SALE TO EDWARD G. DOERING FOR THE AMOUNT OF \$45,000.00

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

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

WHEREAS, the City of Newburgh desires to sell 255 Broadway, being more accurately described as Section 35, Block 2, Lot 4 on the official tax map of the City of Newburgh; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the Interim City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to THE CITY OF NEWBURGH, such sums are to be paid on or before February 24, 2014, being ninety (90) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
225 Broadway	35 - 2 - 4	Edward G. Doering	\$45,000.00

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

# Terms and Conditions Sale

## 255 Broadway, City of Newburgh (35-2-4)

### STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; (e) 2011-2012, 2012-2013 and the first and second installments of the 2013-2014 school taxes, 2012 and 2013 City/County real property taxes, water rents and assessments, and sewer rents and assessments and any other applicable charges (including, but not limited to, omitted and pro rata taxes, demolition charges, interest and penalties); and (f) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The property is sold subject to unpaid school taxes for the tax years of 2011-2012, 2012-2013 and the first and second installment of the 2013-2014 school taxes and unpaid 2012 and 2013 City/County real property taxes. The purchaser shall reimburse the City for any school taxes paid by the City for the tax year 2011-2012, 2012-2013 and the first and second installment of the tax year 2013-2014 and subsequent levies up to the date of the closing and 2012 and 2013 City/County real property taxes. Upon the closing, the property shall become subject to taxation. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provisions of law applicable thereto and it is the sole responsibility of the purchaser bidder to redevelop such parcel so designated in accordance with same.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.

9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before February 24, 2014. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
11. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
12. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
13. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
14. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
15. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
16. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
17. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 240 .2013

OF

NOVEMBER 25, 2013

**A RESOLUTION ADOPTING THE CITY OF NEWBURGH  
POLICY FOR LONG AND SHORT TERM BORROWING FOR CAPITAL PURCHASES**

**BE IT RESOLVED**, that the City Council of the City of Newburgh, New York hereby adopts the City of Newburgh Policy for Long and Short Term Borrowing for Capital Purchases, a copy of which is attached hereto and made a part of this Resolution; and

**BE IT FURTHER RESOLVED**, that this Policy shall take effect on January 1, 2014.



City of Newburgh  
City Comptroller's Office

City Hall – 83 Broadway  
Newburgh, New York 12550

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

John J. Aber  
City Comptroller  
[jaber@cityofnewburgh-ny.gov](mailto:jaber@cityofnewburgh-ny.gov)

**TO:** James Slaughter, Interim City Manager  
**FROM:** John J. Aber, City Comptroller  
**DATE:** November 8, 2013  
**SUBJECT:** Policy for Long and Short Term Borrowing for Capital Purchases

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**I: PURPOSE**

The purpose of this memorandum is to set forth the accounting policies for determining when the City may use capital funds financed by long and/or short term debt for the acquisition, construction, reconstruction or installation of a capital asset. Capital Projects which are financed by long/short term borrowing must meet eligibility requirements pursuant to LFL (Local Finance Law) and must conform to any other legal requirements not set forth in this memorandum.

**II: GENERAL**

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

**III: TERMINOLOGY AND PROCEDURES**

- A. **CAPITAL PROJECTS FUND** – represents a set of accounts in the City of Newburgh's Financial System that is used to record all revenue and expenses associated with a capital project.
- B. **CAPITAL PROJECTS** - capital projects vary widely in nature and purpose. Examples include but are not limited to: major construction, betterment to an asset, major equipment purchases, equipment upgrades, infrastructure improvements and computer systems. This memorandum provides criteria for evaluating the appropriateness for the City to use capital financing and their eligibility for inclusion in the Capital Budget.
- C. **ASSETS** – a capital asset may be a tangible property or an intangible asset that meets the minimum cost, minimum useful life and other criteria for capital funding described in this memorandum.

#### **IV: BASELINE ELIGIBILITY CRITERIA**

In general, Capital Projects must be tangible property or intangible assets with a multi-year life. Projects with the following purpose are typically considered capital eligible:

- A. The purchase, construction, reconstruction and or betterment of buildings, structures, facilities and infrastructure. Infrastructure refers to roads, bridges, sewer systems, street curbs, sidewalks, piers, docks, wharves and water distribution systems.
- B. The purchase of furnishings, machinery and equipment for the initial outfitting of a building, structure, facility or infrastructure.
- C. The purchase of computer systems and computer networks including upgrading computers and computer software.
- D. The purchase of land and real property easements.
- E. The purchase, upgrading and installation of equipment systems such as: street lighting, telecommunications systems, emergency response systems, security systems, fire prevention systems and traffic control systems.
- F. The purchase of motor vehicles.
- G. The purchase of public safety vehicles with public safety outfitting.

#### **V: MINIMUM COST**

The cost of a Capital Project must be \$20,000 or more. The \$20,000 minimum refers to the total cost of the project. If the Capital Project involves equipment, each unit must have a unit cost of \$20,000 unless the equipment is part of an initial outfitting as described in Section IV B.

#### **VI: MINIMUM USEFUL LIFE**

A Capital Projects expected useful life, must be at least five years for the expenditure to be classified as a Capital Project. Departments must document expected useful life estimates for Capital Projects.

#### **VII: INELIGIBLE EXPENDITURES**

- A. Feasibility studies and other work undertaken to determine whether or not a project can or should take place
- B. Rental or lease payments except in cases where temporary space is required as the result of betterment to a building or structure and staff are required to relocate.
- C. Preventative Maintenance
- D. Training costs except for the development of training programs that are part of a Capital Project.

- E. Extended warranties or maintenance agreements that have a cost beyond the base price of the equipment.
- F. Lap-tops, cell-phones, tablets and Ipads
- G. Annual subscriptions, renewals and membership fees
- H. Consumable supplies such as toner cartridges, mouse pads and inventory replacement.

The memorandum replaces any pre-existing policy and procedure in regards to debt financing.

DRAFT

RESOLUTION NO.: 235 -2013

OF

NOVEMBER 25, 2013

A RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR DECEMBER 9, 2013 TO HEAR PUBLIC COMMENT  
CONCERNING THE RENEWAL OF A CABLE FRANCHISE AGREEMENT  
BETWEEN THE CITY OF NEWBURGH  
AND TIME WARNER CABLE NORTHEAST LLC D/B/A TIME WARNER CABLE

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 the renewal of a Cable Franchise Agreement between the City of Newburgh and Time Warner Cable Northeast LLC d/b/a Time Warner Cable; and that such public hearing be and hereby is duly set for the next meeting of the Council to be held at 7:00 p.m. on the 9<sup>th</sup> day of December, 2013, in the 3<sup>rd</sup> Floor Council Chambers, City Hall, 83 Broadway, Newburgh, New York.

RESOLUTION NO.: 241 - 2013

OF

NOVEMBER 25, 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH  
EXPRESSING CONCEPTUAL SUPPORT FOR THE APPLICATION OF MILL  
STREET PARTNERS, LLC TO NEW YORK STATE HOMES AND COMMUNITY  
RENEWAL FOR FEDERAL, STATE, AND LOCAL FINANCIAL ASSISTANCE TO  
DEVELOP AND CONSTRUCT A MIXED-USE WORKFORCE HOUSING PROJECT  
AT THE MID BROADWAY REDEVELOPMENT SITE

WHEREAS, the City of Newburgh wishes to develop the City-owned .66 acre Lander Street surface parking lot (between Chambers Street and Lander Street) as well as the 1.8 acre principal site that fronts on Broadway (the "Mid-Broadway Site"); and

WHEREAS, by Resolution No. 78-2012 of May 29, 2012, the City Council of the City of Newburgh authorized the City Manager to negotiate a development and land disposition agreement with Mill Street Partners, LLC for the development of the Mid-Broadway site and the City; and

WHEREAS, by Resolution No. 194-2012 of October 22, 2012, the City Council authorized the City Manager to execute the development agreement between the City and Mill Street Partners, which development agreement formally designated Mill Street Partners as the Developer of the Mid-Broadway Site; and

WHEREAS, the development agreement designates the Mid-Broadway redevelopment as a "Priority Project" of the City of Newburgh; and

WHEREAS, by Resolution No. 234-2013 of November 12, 2013, the City Council approved the Large-Scale Mixed-Use Special Use Permit application submitted by Mill Street Partners to develop the Mid Broadway Site; and

WHEREAS, Mill Street Partners is seeking various financial assistance through an application to the New York State Homes and Community Renewal;

**NOW, THEREFORE BE IT RESOLVED**, that the City Council of the City of Newburgh expresses its conceptual support for the application of Mill Street Partners to the New York State Homes and Community Renewal for Federal, State, and local assistance to develop and construct the Mid Broadway Redevelopment project.

RESOLUTION NO.: 242 . 2013

OF

NOVEMBER 25, 2013

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER  
TO ENTER INTO AN INTER-MUNICIPAL AGREEMENT  
BETWEEN THE COUNTY OF ORANGE AND THE CITY OF NEWBURGH  
IN CONNECTION WITH THE COUNTYWIDE EFFORTS  
TO IMPROVE MOBILE DATA COMMUNICATIONS AMONG FIRST RESPONDERS**

**WHEREAS**, the County of Orange collaborated with local municipalities to establish a Countywide effort to improve mobile data communications among first responders; and

**WHEREAS**, the City of Newburgh joined with the County of Orange and other local law enforcement agencies to establish a system to improve and enhance important law enforcement functions as provided by the terms of the agreement including but not limited to communications, provisions for laptops, printers and scanners; and

**WHEREAS**, the City of Newburgh wishes to enter into the annexed inter-municipal agreement to facilitate the program to improve mobile data communications and GPS/AVL information among first responders by enhancing the capabilities of patrol officers access to critical information; and

**WHEREAS**, this Council has determined that the City's participation in such program is in the best interests of the City of Newburgh and will enhance law enforcement in the City of Newburgh and in surrounding local municipalities, in cooperation with the County of Orange and other law enforcement agencies;

**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 Countywide efforts to improve mobile data communications among first responders in order to enhance important law enforcement functions for the City of Newburgh and other local law enforcement agencies.



## INTER-MUNICIPAL AGREEMENT

THIS INTER-MUNICIPAL AGREEMENT ("Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the COUNTY OF ORANGE, by and through its Department of Emergency Services and Sheriff's Office, a municipal corporation ("COUNTY"), with principal offices at 255-275 Main Street, Goshen, New York; and the City of Newburgh, N.Y. by and through its Police Department, a municipal corporation with principal offices at 83 Broadway, Newburgh, NY 12550

### ARTICLE 1. SCOPE OF AGREEMENT

COUNTY and MUNICIPALITY wish to improve mobile data communications and GPS/AVL information among first responders by enhancing the capabilities of patrol officers access to critical information. To accomplish this, the COUNTY will provide to MUNICIPALITY the equipment identified in Schedule B attached to and made a part of this Agreement ("Equipment"). The Equipment shall be installed in marked police vehicles of the MUNICIPALITY, which vehicles shall be assigned by the MUNICIPALITY for daily operational use of its police officers in accordance with the terms and conditions of this Agreement and the requirements set forth on Schedule A attached to and made a part of this Agreement ("Vehicles"). Provided that MUNICIPALITY shall make the Vehicles available to the COUNTY's third party installation vendor, the COUNTY shall cause the Equipment to be installed in the Vehicles free of charge to MUNICIPALITY.

### ARTICLE 2. TERM OF AGREEMENT

The term of this Agreement commences on the date first written above and shall continue in full force and effect for so long as the Equipment remains in serviceable condition unless terminated earlier as provided herein.

### ARTICLE 3. EXECUTORY CLAUSE

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

### ARTICLE 4. PROCUREMENT OF AGREEMENT

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

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this Agreement without liability, entitling the COUNTY to recover the Equipment and all monies paid hereunder and MUNICIPALITY 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 COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY's right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

### ARTICLE 5. CONFLICT OF INTEREST

MUNICIPALITY 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 rendering of the goods herein provided. MUNICIPALITY further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the COUNTY, nor any person whose salary is payable, in whole or in part, by the COUNTY, or any corporation, partnership or association in which 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 (1) if required by the Orange County Ethics Law as amended from time to time, to submit a Disclosure form to the Orange County Board of Ethics, amends such Disclosure Form to include their interest in this Agreement, or (2) if not required to complete and submit such a Disclosure Form,

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

#### **ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING**

No party shall assign any of its rights, interests, or obligations under this Agreement, or enter into a subcontract relating to the Equipment, without the prior express written consent of the other party.

#### **ARTICLE 7. BOOKS AND RECORDS**

MUNICIPALITY 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 8. RETENTION OF RECORDS**

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

#### **ARTICLE 9. AUDIT BY THE COUNTY AND OTHERS**

All invoices presented for payment to be made hereunder, and the books, records and accounts upon which said invoices are based are subject to audit by the COUNTY. MUNICIPALITY shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the COUNTY so that it may evaluate the reasonableness of the charges, and MUNICIPALITY shall make its records available to the COUNTY upon request. All books, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the COUNTY, the State of New York, the federal government, and/or other persons duly authorized by the COUNTY. Such audits may include examination and review of the source and application of all funds whether from the COUNTY and State, the federal government, private sources or otherwise. MUNICIPALITY 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 10. INDEMNIFICATION**

MUNICIPALITY agrees to defend, indemnify and hold harmless the COUNTY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) arising out of any act or omission of the MUNICIPALITY, its employees, representatives, subcontractors, assignees, or agents relating to this Agreement.

#### **ARTICLE 11. TERMINATION**

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

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

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

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

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

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

#### **ARTICLE 12. GENERAL RELEASE**

The acceptance by MUNICIPALITY or its assignees of the Equipment and the terms of this Agreement shall constitute and operate as a general release to the COUNTY from any and all claims of MUNICIPALITY arising out of the performance of this Agreement.

**ARTICLE 15. ENTIRE AGREEMENT**

The rights and obligations of the parties and their respective agents, successors, and assigns shall be subject to and governed by this Agreement, including any incorporated attachments, appendixes, and amendments or modifications thereto, which shall supersede any previous understandings or writings between or among the parties.

**ARTICLE 16. 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 both parties. Changes in the scope of this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the provision of additional or other goods or the performance of any additional or other services, the County Executive of the COUNTY, after consultation with the Department of Emergency Services, executes an amendment to this Agreement, which amendment shall specifically set forth the scope of such additional or other goods or services and the amount of compensation and the extension of the time for performance, if any, for any such goods or 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 any such amendment.

**ARTICLE 13. SET-OFF RIGHTS**

The COUNTY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the County's right to withhold for the purposes of set-off any monies otherwise due to MUNICIPALITY (i) under this Agreement, (ii) under any other agreement or contract with the COUNTY, including any agreement or contract for a term commencing prior to or after the term of this Agreement or (iii) from the COUNTY by operation of law. The COUNTY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the COUNTY for any reason whatsoever including, without limitation: tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

**ARTICLE 14. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York. MUNICIPALITY shall utilize the Equipment in accordance with the terms and conditions of this Agreement and all federal, state, and local laws, rules and regulations as are in effect during the term of this Agreement.

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

**COUNTY OF ORANGE**

**City of Newburg, New York**

By: \_\_\_\_\_  
EDWARD A. DIANA  
COUNTY EXECUTIVE

By: \_\_\_\_\_  
NAME:  
TITLE:

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **SCHEDULE "A"**

COUNTY will provide the Equipment to the MUNICIPALITY for daily use by its police officers.

MUNICIPALITY agrees that it shall be solely and fully responsible for the cost of all repairs and maintenance not covered under the service warranty plan provided with the Equipment at time of Equipment purchase and those routine repairs and servicing of the Equipment from the date of expiration of the service plan until termination of this Agreement.

MUNICIPALITY agrees to operate and maintain the Equipment consistent with all manufacturer's recommendations and specifications and in such a manner as required to keep the Equipment operational and service-ready.

MUNICIPALITY agrees not to dispose of the Equipment without the express written permission of the COUNTY. COUNTY reserves the right, in its sole discretion, to demand that the Equipment to be returned to the COUNTY for disposal within thirty (30) calendar days of the COUNTY's request for return.

MUNICIPALITY acknowledges that the Equipment must be available for delivering future County mobile software applications specific to records sharing and 911 communications services provided by the COUNTY.

MUNICIPALITY, by its signature on the Agreement, certifies that at the time of execution of the Agreement it is in full compliance with all standards set by the United States Department of Homeland Security, Federal Emergency Management Agency's National Incident Management System, National Response Framework and Incident Command System, as each may be amended or updated from time to time, and that it will remain in compliance during the entire term of this Agreement.

**SCHEDULE "B"**

EQUIPMENT	SERIAL NUMBER	PROVIDED BY
Panasonic Toughbook TB 53	Serial # 2LTSA46849	County Department of Emergency Services
Panasonic Toughbook TB 53	Serial # 2LTSA46845	County Department of Emergency Services
Panasonic Toughbook TB 53	Serial # 2LTSA46835	County Department of Emergency Services
Havis Shield Docking Station	Serial # 0313P4106668	County Department of Emergency Services
Havis Shield Docking Station	Serial # 0313P4106657	County Department of Emergency Services
Havis Shield Docking Station	Serial # 0313P4106663	County Department of Emergency Services
Brother Printer	Serial # G3Z840567	County Sheriff's Office
Brother Printer	Serial # G3Z840142	County Sheriff's Office
Brother Printer	Serial # G3Z840572	County Sheriff's Office
L-Tron Scanner	Serial # 132508112C	County Sheriff's Office
L-Tron Scanner	Serial # 132188044C	County Sheriff's Office
L-Tron Scanner	Serial # 13267B3F03	County Sheriff's Office