

City of Newburgh Council Work Session

6:00 pm

September 8, 2011

AGENDA

1. Presentations:
 - a. Proposed development of the Mid Broadway site – 15 minute presentations by two respondents to the City's Request for Qualifications (reminder: Res. 158-2011 tabled)
 - b. Workforce Development
 - c. Assessors Report - Base Proportions
2. Procedural Items related to the City Council meeting on September 12, 2011:
 - a. Minutes of the meetings of August 8, 2011
 - b. Notices of Claim
 - c. Monthly reports
3. Proposed Public Hearings:
 - a. (Res. 162) A resolution scheduling a public hearing for September 26, 2011 to hear public comment concerning a local law amending Section C3.00 of the City Charter entitled "Municipal Officers Enumerated" within the Code of the City of Newburgh (see attached proposed local law).
4. Finance Department:
 - a. Cash Report distributed to Council in August
 - b. (Res. 163) Amendment to resolution accepting a grant from Orange County with respect to public works projects (County decreased grant amount from \$50,000 to \$30,000 – County requires new resolution).
 - c. (Res. 164) BAN Resolution
 - d. (Res. 165) Memorializing the City's participation in the optional twenty-year retirement for certain police and fire fighters. (Recently approved by City Council, OSC requires particular language to be included in resolution.)
 - e. (Res. 166) Agreement with Loomis Armored US, LLC for armored car service for cash bank deposits.
 - f. (Res. 167) Acceptance of a donation of a Brinks Truck from the Town of Woodbury, NY.
5. Planning and Development/Real Estate:
 - a. CDBG Engineering Services (see memo and RFQ)

- b. (Res. 168) 86 Fullerton Avenue – Release of Restrictive Covenants
- c. (Res. 169) 21 Leroy Place – Extension to close title on auction property
- d. (Res. 170) 252 Robinson Avenue, 241 Washington Street, and 16 William Street – Extension to close title on auction properties
- e. (Res. 171) 251 Third Street – extension to close on auction property
- f. 34 Carter Street – Request regarding auction accepted bid price (see attached letter)
- g. 25 Hasbrouck Street – Request for extension to close on auction property (see attached letter)
- h. 86 Wisner Avenue (former Jonas Automotive site) – selection of contractor for remediation?
- i. The second public hearing regarding the future Land Use Plan will be held on Monday, Sept. 12, 2011 at 7pm
 - (Res. 172) Council should declare itself lead agency, adopt the EAF and if Council wishes, adopt the Future Land Use Plan (both resolutions attached)

6. Engineering:

- a. (Res. 172) Agreement with Malcolm Pirnie for professional services related to the City's Combined Sewer Overflow (CSO) Project as directed under the NYS DEC consent decree.
- b. (Res. 173) Newburgh Landfill Clean-up – Access agreement (Michelle Kelson)

7. Discussion Items:

- a. Historic District – Councilwoman Bello
- b. Parking Meters

8. Executive Session:

- a. Pending Litigation:

PUBLIC HEARING

PLEASE TAKE NOTICE that the City Council of the City of Newburgh will hold a second Public Hearing on Monday, September 12, 2011 at 7:00 P.M. in the City Council Chambers, 3rd Floor, City Hall, 83 Broadway, Newburgh, New York to receive public comment regarding the adoption of the proposed City of Newburgh Futures Land Use Plan as a component of the Sustainable Master Plan.

**LORENE VITEK
CITY CLERK**

DATED: August 9, 2011

PUBLISH: August 16, 2011 (The Sentinel)

August 17, 2011 (Hudson Valley Press
& Mid-Hudson Times)

RESOLUTION NO.: 162 - 2011

OF

SEPTEMBER 12, 2011

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

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

LOCAL LAW NO.: _____ - 2011

OF

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

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

SECTION 1 - TITLE

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

SECTION 2 - AMENDMENT

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

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

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

SECTION 3 - VALIDITY

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

Underlining denotes additions

SECTION 4 - EFFECTIVE DATE

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

DRAFT

Underlining denotes additions

RESOLUTION NO.: 103 - 2011

OF

SEPTEMBER 12, 2011

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

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

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

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

Revenue Account A.0000.2560

Expense Account A.5110.0412

Resolution No. 164-2011

of

September 12, 2011

BOND RESOLUTION OF THE CITY OF NEWBURGH, NEW YORK, ADOPTED SEPTEMBER 12, 2011, AUTHORIZING VARIOUS PURPOSES IN AND FOR THE CITY, STATING THE ESTIMATED TOTAL COST THEREOF IS \$4,060,000, APPROPRIATING SAID AMOUNT THEREFOR, AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$4,060,000 BONDS OF SAID CITY TO FINANCE SAID APPROPRIATION.

THE CITY COUNCIL OF THE CITY OF NEWBURGH, IN THE COUNTY OF ORANGE, NEW YORK, HEREBY RESOLVES (by the favorable vote of not less than two-thirds of all the members of said City Council) AS FOLLOWS:

Section 1. The City of Newburgh, in the County of Orange, New York (herein called the "City"), is hereby authorized to construct, acquire or undertake the various projects as described in column A of Schedule I attached hereto and hereby made a part hereof, at the estimated maximum costs indicated in column B of such Schedule I. The estimated total cost of such projects, including preliminary costs and costs incidental thereto and to the financing thereof, is \$4,060,000 and said amount is hereby appropriated therefor. The plan of financing includes the issuance of not to exceed \$4,060,000 bonds of the City to finance said

appropriation, and the levy and collection of taxes on all the taxable real property in the City to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

Section 2. Bonds of the City in the aggregate principal amount of not to exceed \$4,060,000 are hereby authorized to be issued in the principal amounts indicated in column C of Schedule I for each of the respective objects or purposes indicated in column A of such Schedule I, pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called "Law"), to finance the appropriation referred to herein.

Section 3. The respective periods of probable usefulness of the specific objects or purposes and classes of objects or purposes for which said bonds are authorized are to be issued, within the limitations of §11.00 a. of the Law as referenced in column E of the attached Schedule I, are set forth in column D of the attached Schedule I.

Section 4. The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the City for expenditures made after the effective date of this resolution for the purpose or purposes for which said bonds are authorized. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

Section 5. Each of the bonds authorized by this resolution and any bond anticipation notes issued in anticipation of the sale of said bonds shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation of said bonds shall be general obligations of the City, payable as to both principal and interest by general tax upon all the taxable real property within the City. The faith and credit

of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds and provision shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the City Council relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, and relative to executing agreements for credit enhancement, are hereby delegated to the Comptroller/Director of Finance, the chief fiscal officer of the City.

Section 7. Pursuant to the provisions of section 16 of Chapter 223 of the New York Laws of 2010, the City is authorized to include in this resolution the following pledge and agreement of the State of New York (herein called the "State") contained in said Section 16:

“The state does hereby pledge to and agree with the holders of any bonds, notes or other obligations issued by the city during the effective period of this act and secured by such a pledge that the state will not limit, alter or impair the rights hereby vested in the city to fulfill the terms of any agreements made with such holders pursuant to this act, or in any way impair the rights and remedies of such holders or the security for such bonds, notes or other obligations

until such bonds, notes or other obligations together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged.”

Section 8. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

- (c) such obligations are authorized in violation of the provisions of the constitution.

Section 9. This Bond Resolution shall take effect immediately, and the City Clerk is hereby authorized and directed to publish the foregoing resolution, in full, together with a Notice attached in substantially the form prescribed by §81.00 of the Law in “*The Sentinel*,” “*The Mid Hudson Times*,” and “*The Hudson Valley Press*,” three newspapers each having a general circulation in the City and hereby designated the official newspapers of said City for such publication.

The adoption of the foregoing resolution was seconded by

_____ and duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

The resolution was declared adopted.

Schedule I

2011 Capital Improvement Plan

<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
<u>Project Description (object or purpose)</u>	<u>Estimated Maximum Cost</u>	<u>Amount of Bonds Authorized</u>	<u>Period of Probable Usefulness</u>	<u>PPU Section 11.00 a. Reference</u>
Fire Truck	\$ 400,000	\$ 400,000	20	27
Scott Packs	30,000	30,000	5	32
Fire Gear	35,000	35,000	5	32
Communication Radios	35,000	35,000	10	25
DPW Communication Radios	25,000	25,000	5	32
Plows (2 @ approx. \$150,000 each)	300,000	300,000	15	28
Pickup Trucks w/ Plows (3 @ approx. \$30,000 each)	90,000	90,000	15	28
Parking Meters	100,000	100,000	5	50
Hardware Security Backup System	180,000	180,000	5	32
Patrol Cars (3 @ approx. \$30,000 each)	90,000	90,000	3	77
Computers	30,000	30,000	5	32
Finger Print Scanner	25,000	25,000	5	32
Water Tank Reconstruction	2,200,000	2,200,000	40	1
SCADA System - Water System	300,000	300,000	40	1
Garbage Truck	220,000	220,000	15	28
Totals:	<u>\$4,060,000</u>	<u>\$4,060,000</u>		

CERTIFICATE

I, LORENE VITEK, City Clerk of the City of Newburgh, in the County of Orange, State of New York, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the City Council of said City of Newburgh duly called and held on September 12, 2011, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of said City Council and is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relate to the subject matters referred to in said extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said City of Newburgh this _____ day of September, 2011.

(SEAL)

City Clerk

(THE FOLLOWING NOTICE IS TO BE ATTACHED TO AND
TO BE PUBLISHED
WITH RESOLUTION AFTER ADOPTION)

NOTICE

The resolution published herewith, has been adopted on September 12, 2011, and the validity of the obligations authorized by such resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the CITY OF NEWBURGH, in the County of Orange, New York, is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this Notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the publication of this Notice, or such obligations were authorized in violation of the provisions of the constitution.

LORENE VITEK
City Clerk

EXTRACT OF MINUTES

Meeting of the City Council of the

City of Newburgh, in the

County of Orange, New York

September 12, 2011

* * *

A regular meeting of the City Council of the City of Newburgh, in the County of Orange, New York, was held at the City Hall, Newburgh, New York, on September 12, 2011, at _____ o'clock P.M. (Prevailing Time).

There were present: Hon. Nicholas Valentine, Mayor; and

Councilpersons:

There were absent:

Also present: Lorene Vitek, City Clerk

* * *

_____ offered the following resolution and moved its adoption:

RESOLUTION NO.: 105 - 2011

OF

SEPTEMBER 12, 2011

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

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

RESOLUTION NO.: 166 - 2011

OF

SEPTEMBER 12, 2011

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into an agreement with Loomis Armored US, LLC to provide Armored Car Services in accordance with the attached proposal with all such terms and conditions as may be required by the Corporation Counsel.



City of Newburgh
City Comptroller's Office

City Hall - 83 Broadway
Newburgh, New York 12550

Tel. (845) 569-7316
Fax (845) 569-7490

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

FILE COPY

NOTICE
REQUEST FOR PROPOSALS
FOR
ARMORED CAR SERVICES

CITY OF NEWBURGH, NEW YORK

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

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

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

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

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

Anna Marie Calli
Acting City Comptroller/Sr. Account Clerk

/edg

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

"AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER"

REQUEST FOR PROPOSALS
FOR
ARMORED CAR SERVICES

Proposal Number 16.10
December 14, 2010

1. PURPOSE

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

2. SUBMISSION OF PROPOSALS

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

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

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

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

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

3. QUALIFICATIONS

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

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

4. SCOPE OF SERVICES

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

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

4.2 SCOPE OF WORK

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

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

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

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

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

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

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

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

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

5. CONTRACT

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

6. COST PROPOSAL

6.1 PAYMENT

6.1.1 Vendors shall submit Proposals citing rates as follows:

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

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

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

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

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

7. EVALUATION OF PROPOSALS

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

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

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

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

8. ALTERNATIVES

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

9. INDEMNIFICATION

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

10. SPECIFICATION CLARIFICATION

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

11. MODIFICATION AND WITHDRAWAL OF PROPOSALS

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

12. INSURANCE AND SECURITY REQUIREMENTS

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

RFP FOR ARMORED CAR SERVICES
CITY OF NEWBURGH, NEW YORK

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

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

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

NON-COLLUSIVE PROPOSAL CERTIFICATE

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

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

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

12/17/2010
(Date)

Sarah Kattapan
(Signature)

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

LOOMIS ARMORED US, LLC
(Name of Firm)



NON-COLLUSION AFFIDAVIT

CITY OF NEWBURGH

STATE OF TEXAS)
)SS
COUNTY OF HARRIS)

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

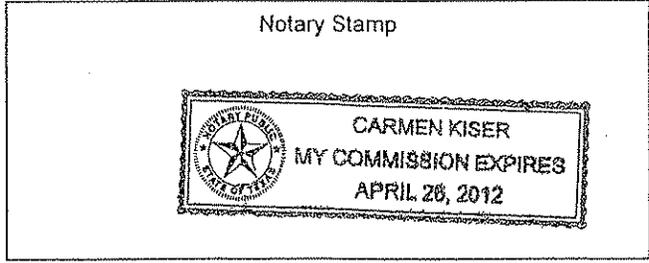
I am A VICEPRESIDENT - FINANCIAL & ACCOUNTING SERVICES an officer of the firm of LOOKUS ARMORED US, LLC the vendor making the Proposal for the above named work, and that I executed the said Proposal with full authority to do so; that said bidder has not, directly or indirectly, entered into any agreement,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

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

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

Name: SARAH KATTAPONA Title: VP FINANCIAL & ACCOUNTING SERVICES

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



THIS AFFIDAVIT MUST BE COMPLETED BY ALL VENDORS SUBMITTING PROPOSALS

ACKNOWLEDGMENT BY PROPOSER

If Individual or Individuals:

STATE OF _____)
COUNTY OF _____) SS.:

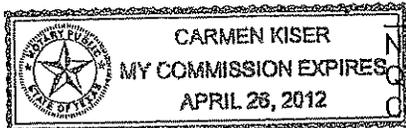
On this _____ day of _____, 2010, before me personally appeared _____ to me known and known to me to be the same person(s) described in and who executed the within instrument, and he/she (or they severally) acknowledged to me that he/she (or they) executed the same.

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

If Corporation:

STATE OF TEXAS)
COUNTY OF HARRIS) SS.:

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



Carmen Kiser
Notary Public, State of Texas
Qualified in Harris Co, TX
Commission Expires 4/26/12

If Partnership:

STATE OF _____)
COUNTY OF _____) SS.:

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

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

SCHEDULE B - FEES AND EXPENSES

Description of Services

Loomis Armored US, LLC., will provide service Monday, Wednesday and Friday (Holidays excluded) for the City of Newburgh, with delivery to TD Bank same day, at the daily price of Twenty-two dollars (\$22.00). Loomis will also provide on call service for same day service at the daily price of Twenty-two dollars (\$22.00), with a 2PM prior day notification.



SERVICE AGREEMENT

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

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

and

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

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

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

CUSTOMER and LOOMIS agree to the following:

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

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

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

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

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

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

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

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

New Account Setup Fee: \$50

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

Decline

Reconstruction Obligations:

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

Decline

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

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

THE CITY OF NEWBURGH

LOOMIS ARMORED US, LLC

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

By _____
Printed Name _____
Title _____
Date _____

APPROVED AS TO FINANCES

By _____
Cheryl A. Gross
Comptroller

APPROVED AS TO FORM

By _____
Michelle Kelson
Corporation Counsel

TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. **Limitations & Force Majeure:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Language from the City's Template (Sections Modified)

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

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

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

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

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

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

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

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

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

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

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

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

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

Type of Coverage Limit of Coverage

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

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

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

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

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

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

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

Certificates of insurance shall be sent to:

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

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

RESOLUTION NO.: W07 -2011

OF

SEPTEMBER 12, 2011

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

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

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

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

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

RESOLUTION NO.: 168 - 2011

OF

SEPTEMBER 12, 2011

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

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

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

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

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

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

RESOLUTION NO: 109 - 2011

OF

SEPTEMBER 12, 2011

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

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

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

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

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

WHEREAS, this Council has determined that granting the requested extension would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that an extension of time to close title on 21 Leroy Place be and is hereby granted until October 14, 2011, that date being sixty (60) days from the August 16, 2011 deadline previously authorized by the City Manager.

RESOLUTION NO: 170 - 2011

OF

SEPTEMBER 12, 2011

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

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

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

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

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

WHEREAS, this Council has determined that granting the requested extension would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that an extension of time to close title on 252 Robinson Avenue (Section 7, Block 2, Lot 3), 241 Washington Street (Section 38, Block 2, Lot 12) and 16 William Street (Section 35, Block 3, Lot 14) be and is hereby granted until November 14, 2011; that date being ninety (90) days from the August 16, 2011 deadline previously authorized by the City Manager.

RESOLUTION NO: 171 - 2011

OF

SEPTEMBER 12, 2011

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

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

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

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

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

WHEREAS, this Council has determined that granting the requested extension would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that an extension of time to close title on 251 Third Street be and is hereby granted until February 16, 2012, that date being six (6) months from the August 16, 2011 deadline previously authorized by the City Manager.

RESOLUTION NO.: 173 - 2011

OF

SEPTEMBER 12, 2011

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

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

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

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

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

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

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

Between City of Newburgh and Malcolm Pirnie, Inc.

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

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

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

The location of the Project is _____ [“**Site**”], _____ [“**State**”].

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

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

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

1 BASIC SERVICES

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

2 ADDITIONAL SERVICES

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

3 SECTION 3 – CLIENT'S RESPONSIBILITIES

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

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

Between City of Newburgh and Malcolm Pirnie, Inc.

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

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

4 PERIODS OF SERVICE

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

5 COMPENSATION

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

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

6 OPINIONS OF CONSTRUCTION COST

6.1 Construction Cost. If the Service Instruments includes an estimate of the cost of constructing a facility [**Construction Cost**], that cost includes the total cost to Client of those portions of the Project described in the Service Instruments. Construction Cost will not include Malcolm Pirnie's compensation and expenses, the cost of land, rights of way, or compensation for properties. Construction Cost will also not include Client's legal, accounting, or insurance counseling services, or interest and financing charges incurred in connection with the Project, or the cost of services to be provided by others under paragraph 3.6 unless otherwise specified in Schedule A.

6.2 Opinions of Cost. Malcolm Pirnie's opinion of probable Construction Cost is made on the basis of Malcolm Pirnie's experience and qualifications and represents Malcolm Pirnie's judgment as an experienced and qualified professional engineering firm, familiar with the construction industry. Malcolm Pirnie does not guarantee that proposals, bids or actual Project cost will not vary from Malcolm Pirnie's opinions of probable Construction Cost.

7 GENERAL CONSIDERATIONS

7.1 Changes. By written notice at any time, Client may change the Basic Services, provided such changes are within the general scope of the services contemplated by this Agreement. In such event, an equitable adjustment both in the compensation for and time of performance of the Agreement shall be made in writing prior to Malcolm Pirnie's performing the changed services.

7.2 Confidentiality. Malcolm Pirnie will hold secret and confidential all information designated by Client as confidential [**Confidential Information**]. Malcolm Pirnie will not reveal Confidential Information to a third party unless:

- 7.2.1 Client consents in writing;
- 7.2.2 the information is or becomes part of the public domain;
- 7.2.3 Malcolm Pirnie lawfully possessed the information before receipt from Client;
- 7.2.4 applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure; or
- 7.2.5 failure to disclose the information would pose an imminent and substantial threat to human health or the environment.

7.3 Professional Service. The Service Instruments furnished under this Agreement are the tangible results of Malcolm Pirnie's professional services for the Services and Malcolm Pirnie shall have the right to use or reuse and retain the copyright of the Service Instruments for its purposes and at its sole risk, without liability to Client

7.3.1 Reuse. Malcolm Pirnie does not represent the Service Instruments to be suitable for reuse by Client or others for extensions of the Services or on any other project. Any reuse without written verification or adaptation by Malcolm Pirnie for the specific purpose intended is at Client's sole risk, without liability to Malcolm Pirnie. Any such verification or adaptation will entitle Malcolm Pirnie to compensation at rates to be agreed on by Client and Malcolm Pirnie.

7.3.2 CADD. Malcolm Pirnie may provide information related to the Service Instruments in computer-assisted design and drafting format [**CADD**] to Client. CADD is derived in part from computer software for which Malcolm Pirnie is licensed. These licenses are not transferable. Any unlicensed reuse of CADD may subject the user to liabilities to the software licensor.

7.3.3 Electronic Media. Either party to this Agreement may rely on the data or information set forth on paper (also known as "hard copies") that the party receives from the sending party by mail, hand delivery, or facsimile as items the sending party intended to send. Data or information sent in electronic media format by one party to the other party are furnished only for the convenience of the receiving party and shall not be relied upon by the receiving party. If there is a discrepancy between the data received in electronic media format and the hard copies, the hard copies govern. Any conclusion or information obtained or derived from the data in electronic media format shall be at the user's sole risk. When transferring documents in electronic media format, the sending party makes no representations as to the long term compatibility, usability, or readability of such documents resulting from the use of software, application packages, operating systems or computer hardware differing from those used by the document's creator.

7.4 Insurance. Malcolm Pirnie will maintain insurance against the following risks during the term of the Agreement:

- 7.4.1 workers compensation in statutory amounts and employer's liability for Malcolm Pirnie's employees' Services-related injuries or disease;
- 7.4.2 general liability and automobile liability each in the amount of \$1,000,000 for personal injury or property damage to third parties which arises from Malcolm Pirnie's performance under this Agreement; and

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

8 SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

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

STANDARD AGREEMENT FOR PROFESSIONAL SERVICES

Water/Wastewater Study Phase Services

Between City of Newburgh and Malcolm Pirnie, Inc.

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

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

CLIENT

MALCOLM PIRNIE, INC.

Date _____

Date _____

By _____

By _____

Title _____

Title _____

Witness _____

Witness _____

Address for Giving Notices:

Address for Giving Notices:

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

Schedule A

Scope of Basic Engineering Services and Related Matters

A.1 Project Administration and Management

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

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

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

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

A.2 Background Review

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

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

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

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

A.3 Flow Monitoring and Rain Gauging Program

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

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

A.3.2 Under this task, a Flow Monitoring and Rain Gauging Plan will be developed that defines the goals of the monitoring program and identifies targeted monitoring locations. This plan will be updated throughout the course of work to reflect the number, type and location of the flow meters and rain gauges.

A.3.3 Provide, install, maintain and operate up to twenty (20) flow meters and up to four (4) rain gauges. The final number of flow meters and rain gauges to be used will be determined in conjunction with the work performed under Task A.2 and Task A.5.

Work to be performed under this task consists of:

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

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

A.4 Collection System Base Mapping

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

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

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

A.5 Hydraulic Model Development, Calibration and Validation

A.5.1 A hydraulic and hydrologic model of the Client’s collection system, including critical diversion structures, regulators, overflows, pump stations, portions of the trunk sewer system, and interceptor, will be developed under this task. The model will be used to simulate the effect of various rain events on the sewer system under existing conditions, and to predict system response to precipitation under various improvement scenarios.

A.5.2 The process of calibrating the model involves adjusting selected hydraulic and hydrologic parameters such that the model reflects the performance of the sewer system as recorded during the Flow Monitoring and Rain Gauging

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

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

A.6 Document Nine Minimum Control Implementation

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

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

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

A.7 Wastewater Treatment Plant Wet Weather Process Capacity Study

A.7.1 Malcolm Pirnie will establish theoretical and demonstrated process capacities for the WWTP. Five years worth of Discharge Monitoring Reports and other operating data from the WWTP will be analyzed. The assessment of the existing facilities will begin with a summary of the existing wastewater flows, loads, and permit limits. An evaluation of the existing WWTP processes will then be performed. This evaluation will involve a review of the operating conditions of each major "wet-stream" process against standard design criteria to estimate theoretical capacities. The results of this analysis will be compared against historical operating data to establish trends in changes of process unit performance under increased flows during wet weather events.

A.7.2 Malcolm Pirnie will assess past population growth trends and potential planned developments within the sewer areas tributary to the WWTP to develop reasonable projections of future year population and wastewater flows. Service areas populations and wastewater flows for the five-, 10- and 20-year planning periods will be developed for aiding in the dynamic modeling, to be performed under Task A.7.3 and potential evaluation of conveying additional flow to the WWTP. For this task, Malcolm Pirnie will rely on information provided by the Client's Planning Department.

A.7.3 Develop a dynamic process model (flow variation) for the WWTP to model the impact of various scenarios of current and future flows and loadings. The objective of the model development will be to examine how various wet weather variations in flow and organic loading would affect the treatment processes and effluent quality.

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

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

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

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

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

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

A.8 Survey and WWTP Hydraulic Modeling

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

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

A.9 Wet Weather WWTP Capacity Alternative Brainstorming and Evaluation

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

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

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

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

A.10 Baseline Conditions Assessment

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

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

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

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

A.11 Develop CSO Compliance Strategy

A.11.1 Sensitive Area Identification.

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

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

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

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

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

A.11.2 Receiving Water Sampling and Characterization.

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

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

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

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

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

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

A.11.3 Selection of Compliance Approach

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

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

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

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

A.12 CSO Control Technologies and Alternatives Evaluation

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

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

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

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

The alternatives could include, but are not limited to:

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

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

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

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

A.13 Cost-Benefit Evaluation and CSO Control Recommendation

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

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

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

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

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

A.14 Preliminary Affordability Analysis and Implementation Schedule

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

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

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

A.14.3 The task activities include:

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

A.15 Public Participation

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

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

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

A.16 LTCP Report

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

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

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

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

Schedule B
Additional or Optional Engineering Services

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

Schedule C
Pricing Schedule

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

a. Summary of Charges

C.2 Terms of Payment

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

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

RESOLUTION NO.: 174 - 2011

OF

SEPTEMBER 12, 2011

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

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

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

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

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

WHEREAS, the Parties believe it is in the best interest of each of them and collectively to settle and to compromise without litigation certain of the disputes among

them, and between them and the EPA, and others, concerning the Environmental Conditions and related issues; and

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

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

SETTLEMENT AND ACCESS AGREEMENT

AMONG

CITY OF NEWBURGH,

E.I. DUPONT DE NEMOURS & COMPANY

AND

BAYER CROPSCIENCE, INC.

(SUCCESSOR-IN-INTEREST TO STAUFFER CHEMICAL COMPANY)

This Settlement Agreement (“Agreement”), effective as of [_____], 2011] (the “Effective Date”), is hereby made by and among:

- A. The City of Newburgh, Orange County, New York, its agencies, departments, officers, employees, agents, representatives, successors and assigns, collectively referred to in this Agreement as the “City”;
- B. E.I. DuPont de Nemours & Company, its officers, employees, corporate predecessors, subsidiaries, affiliates, insurers, agents, representatives, successors and assigns, collectively referred to in this Agreement as “DuPont”; and
- C. Bayer CropScience, Inc. (Successor-in-Interest to Stauffer Chemical Company), its officers, employees, corporate predecessors, subsidiaries, affiliates, insurers, agents, representatives, successors and assigns, collectively referred to in this Agreement as “BCSI.”

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

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

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

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

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

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

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

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

1. **Definitions:** The following terms used in this Agreement have the following meanings:

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

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

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

2. **Agreement Is a Contract:** The Parties to this Agreement intend this Agreement to be a contract and to be enforceable as such. The contract shall be governed and interpreted according to the laws of the State of New York.
3. **Claims Against Non-Parties:** Nothing herein shall affect the right of any Party to pursue its rights, including, but not limited to, rights of contribution and indemnification, against entities not a Party to this Agreement relating in any way to the Environmental Conditions, DuPont's/BCSI's Obligations or the Site.
4. **Good-Faith Cooperation:** The Parties shall coordinate and cooperate in good faith with each other to achieve the objectives of this Agreement. Included within the duty of good faith is the duty of DuPont and BCSI collectively to periodically and timely inform the City of the activities they are undertaking to implement their responsibilities hereunder and of the City to periodically inform DuPont and BCSI of the activities it is undertaking to implement its responsibilities hereunder.
5. **Dispute Resolution:** The Parties shall make all reasonable efforts to resolve informally any questions or disputes that arise in the implementation or interpretation of this Agreement. The Parties agree that, except as otherwise provided herein, prior to seeking judicial

enforcement of this Agreement, they will engage in a mutually acceptable form of alternative dispute resolution (“ADR”), to be conducted in New York, for a period of not less than one month and not to exceed three months. Notwithstanding the foregoing, however, if (a) the Parties are unable to agree upon a mutually acceptable form of ADR within a period of one month from the date that the Party seeking enforcement of this Agreement so notifies the other Parties, (b) the ADR process fails to achieve a mutually acceptable resolution within the time period set forth in the foregoing sentence, or (c) the Party seeking enforcement of this Agreement deems the circumstance to be an emergency such that it believes it necessary to seek immediate injunctive or other equitable relief, then, in any such event, the Parties retain their rights to seek judicial enforcement of this Agreement.

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

7. **Responsibilities of the City:** In exchange for the promises and covenants contained herein, the City shall:
 - (a) Provide timely access to the Agreement Areas to any Permittee for the performance of DuPont’s/BCSI’s Obligations in accordance with this Agreement. Notwithstanding anything to the contrary and without in any way limiting the foregoing, the provision of access shall include, but not be limited to: allowing the clearing of the Agreement Areas so that access to them is unimpeded at all times that Permittees are performing DuPont’s/BCSI’s Obligations; and ensuring that the Permittees have

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

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

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

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

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

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

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

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

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

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

- (h) In coordination with DuPont and BCSI and as necessary to enable them to fulfill DuPont's/BCSI's Obligations, provide access control to the Site and Site security (i) by repair and maintenance of the perimeter fence and (ii) by locking the gates to the City Property during non-working hours or, alternatively, by providing security personnel thereat; provided, however, that the activities undertaken by the City pursuant to (i) and (ii) of this Subparagraph (h) shall not prevent DuPont and BCSI from having timely, full, exclusive and unrestricted access to the portion of the Drum Cache Area and the surrounding buffer area located on the City Property, without interference by anyone.
- (i) Assist DuPont, BCSI and any Permittee, through such means as transportation and re-emplacement if authorized by EPA or DEC and following consultation and coordination with the City by DuPont, BCSI and any Permittee, in leaving non-hazardous materials, including, but not limited to, drums containing non-hazardous materials, at the City Property, including the portion of the Drum Cache Area on City Property, as more particularly described in Exhibit B.
- (j) Provide Permittees with all municipal permits, licenses, approvals and other authorizations that are necessary for the performance of DuPont's/BCSI's Obligations on, in or at the Agreement Areas and facilitate, to the extent allowed by law, Permittees' obtaining any other permits, licenses, approvals and other authorizations on, in or at other City-owned property, or as otherwise subject to the jurisdiction of the City, that are necessary for the performance of DuPont's/BCSI's Obligations.

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

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

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

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

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

insurance covering personal injury and property damage, and other insurance with minimum coverages as listed below. Such policies shall be written by insurers of recognized financial standing who have been fully informed as to the nature of the Work to be performed. The Commercial General Liability Insurance shall be written on an ISO Occurrence Form (or equivalent). Except for Worker's Compensation insurance, the City shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligations of such contractors and subcontractors and not those of the City. Each policy naming the City as an additional insured shall not contain an "owned property exclusion" nor a "severability of interest exclusion."

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

Prior to the commencement of the Work, DuPont and BCSI shall require the contractors and subcontractors retained by DuPont and BCSI to submit to the City upon the City's request certificates of insurance evidencing compliance by such contractors and subcontractors with these requirements.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the City with respect to its interests, (ii) it shall not be canceled, including without limitation, for non-payment of premium, or materially amended without thirty (30) days' prior written notice to the City, and the City shall have the option to pay any necessary premiums and charge the cost back to DuPont and BCSI.

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

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

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

- (c) Provide the City with copies of all draft plans, providing the City with a reasonable opportunity to comment on such plans, and final plans and reports submitted to and approved by EPA and or any other regulatory agencies of the United States or the State of New York pursuant to the AOC relating to the Agreement Areas and to DuPont's/BCSI's Obligations.
- (d) Cooperate with the City in the performance of its obligations pursuant to Paragraph 7.
- (e) Following the satisfactory completion of all of DuPont's/BCSI's Obligations and the termination of the AOC as determined by EPA, take all actions necessary to terminate this Agreement.
- (f) In the event that, following a period of thirty (30) days after the receipt by DuPont and BCSI of written notice from the City that DuPont and BCSI or any Permittee has breached this Agreement in some respect, within which period of time DuPont and BCSI or any Permittee has the opportunity to cure such breach, DuPont and BCSI or any Permittee has failed to fulfill any obligation of this Agreement, DuPont and BCSI or any Permittee shall not oppose, and shall comply with, an applicable order by a court of competent jurisdiction, and shall indemnify, defend and hold the City harmless from any and all Claims that are based exclusively upon, and are derived exclusively from, any such breach of this Agreement and non-compliance with any such court order.

9. **Authority, Access and Term of Agreement:** The City represents that it is the sole owner of the City Property, and has the authority to grant the access rights and other rights as set forth in this Agreement, and further represents that, to the best of its knowledge and information, there are no unrecorded liens, encumbrances or rights of others that could affect any Permittee's access to, or right to use, the City Property as provided for herein. The City hereby acknowledges and agrees that DuPont and BCSI, at their sole expense, will be permitted to record the Memorandum of Settlement and Access Agreement as set forth in Exhibit C, attached hereto. DuPont and BCSI will, simultaneous with executing this Agreement, execute and deliver the Termination of Memorandum of Settlement and Access Agreement, attached hereto as Exhibit D, which will be held by the City of Newburgh's Corporation Counsel in escrow until certification by EPA that the removal action being undertaken by DuPont and BCSI pursuant to the AOC has been completed and EPA has terminated the AOC. At such time, the City of Newburgh's Corporation Counsel is hereby authorized to file the Termination of Memorandum of Settlement and Access Agreement, thereby discharging the Memorandum of Settlement and Access Agreement of record.
10. **Reservation of Claims:** Notwithstanding anything to the contrary contained in this Agreement or otherwise:

- a) In return for the performance of the commitments made and the consideration given in this Agreement, the City, DuPont and BCSI each agrees to forgo any and all Claims against each of the other Parties, so long as such Party is not in breach of this Agreement, as determined pursuant to Paragraph 5 (Dispute Resolution) or any judicial enforcement of any such alleged breach, and has not cured any such alleged breach within thirty (30)

days of receipt of a written determination rendered pursuant to Paragraph 5 or any final judicial determination.

- b) The agreement to forgo any and all Claims, as aforesaid, and any other event, document or circumstance including, but not limited to, any order issued by EPA to the City or any agreement with EPA entered into by the City, shall not be considered applicable: (i) to any portion of the City of Newburgh Landfill outside the Drum Cache Area or to any other area; or (ii) to any other potential claim of a Party, or to any costs, not explicitly covered by this Agreement.

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

(a) For the City:

(b) For BCSI:

With a copy to:

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

(c) For DuPont:

12. **Enforceability:** Should any provision of this Agreement be deemed unenforceable for any reason, the remainder of this Agreement shall continue in effect so long as the purpose of this Agreement is not nullified by the absence of such provision.

13. **Entire Agreement:** This Agreement reflects the entire agreement among the Parties as to the same subject matter, and, except as otherwise provided in this Agreement, all prior agreements, understandings and commitments are merged with and into and superceded by this Agreement. This Agreement can be amended, including, but not limited to, an expansion of the Agreement Areas for the performance of DuPont's/BCSI's Obligations, restated or supplemented only by a written agreement signed by all Parties. This Agreement may be executed in counterparts, all of which together shall be the original Agreement.
14. **Non-Assignment:** The rights, liabilities and obligations under this Agreement shall not be transferred or assigned by any Party unless each Party shall give prior written consent for such transfer or assignment. Consent shall not be unreasonably delayed or withheld.
15. **Headings:** The headings are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

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

Dated: _____

THE CITY OF NEWBURGH, NEW YORK

By: _____
Its:

EXHIBIT A

EXHIBIT B

CONSTRUCTION PHASE

Access to site, including:

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

Provision of temporary utilities, including:

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

Site security, including:

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

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

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

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

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

POST-CONSTRUCTION PHASE

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

EXHIBIT C

MEMORANDUM OF SETTLEMENT AND ACCESS AGREEMENT

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

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

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

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

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

5. Term of Access Agreement:

Period/Completion of Remediation)

(Date/Time)

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

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

**Grantor:
THE CITY OF NEWBURGH, NEW YORK**

By: _____
Its:

STATE OF NEW YORK)
) ss:
COUNTY OF)

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

Signature and Office of individual
taking acknowledgment

Grantee:
E.I. DUPONT DE NEMOURS & COMPANY

By: _____
Its:

STATE OF)
) ss:
COUNTY OF)

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

Signature and Office of individual
taking acknowledgment

ATTACHMENT A

EXHIBIT D

