



City of Newburgh Council Work Session  
*Sesión de trabajo del Concejal de la  
Ciudad de Newburgh*  
September 24, 2015

6:00 p.m.  
AGENDA

1. Reminders/Recordatorios:

- a. A financial report will be given by the City Comptroller.

*Un reporte financiero será presentado por el Contralor de la Ciudad.*

2. Presentations/Presentaciones:

- a. A presentation will be by Corporal Jack F. Marziliano, Single Marine Program President from the Marine Corps.

*Una presentación será hecha por el Corporal Jack F. Marziliano, Presidente del Programa Individuo Marino de la Infantería Marina.*

3. Engineering/Ingeniería:

- a. Resolution No. 237- 2015

A resolution of the City Council of the City of Newburgh to declare itself Lead Agency under the State Environmental Quality Review Act (SEQRA) with respect to the Northeast Orange County Intermunicipal Water Supply Project. (Chad Wade)

*Una resolución del Concejal de la Ciudad de Newburgh para declararse Agencia Principal bajo Acta de Repaso Calidad Ambiental del Estado con respecto al Proyecto del Suministro de Agua Intermunicipal del Condado del Noreste de Orange.*

- b. Resolution No. 238- 2015

A resolution authorizing the City Manager to execute a license agreement with Precision Pipeline Solutions, LLC to allow access to City-owned property located 360 Liberty Street during a gas main replacement project on Liberty Street performed on behalf of Central Hudson Electric and Gas. (Chad Wade)

*Una resolución autorizando al Gerente de la Ciudad a llevar a cabo un contrato de licencia con Precision Pipeline Solutions, LLC, para obtener permiso de entrada a una propiedad de la Ciudad en el 360 de la calle Liberty durante el proyecto de reemplazo de la tubería principal de gas en la calle de Liberty en nombre de la compañía de Central Hudson Electricidad y Gas.*

c. Resolution No. 239- 2015

A resolution authorizing the City Manager to accept a proposal and execute an agreement with McIntosh Controls Corp. D/B/A Smart Cover Systems for a remote reservoir level monitoring system at a cost of \$12,583.00. (Chad Wade)

*Una resolución autorizando al Gerente de la Ciudad a aceptar una preposición y llevar a cabo un acuerdo con McIntosh Controls Corp. haciendo negocios como Smart Cover Systems por un sistema de monitoria remota del agua en la reserva al costo de \$12,583.*

d. Resolution No. 240- 2015

A resolution authorizing the City Manager to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) for Professional Services related to asbestos, lead paint and microbial sampling and surveys in connection with a locker room renovation project in the public safety building. (Chad Wade)

*Una resolución autorizando al Gerente de la Ciudad a aceptar una preposición y llevar a cabo un acuerdo con Quality Environmental Solutions & Technologies, Inc. (QUES&T) por Servicios Profesionales relacionados con asbestos, pintura de plomo y de muestras microbianos y estudios en conexión con un proyecto de renovación en el edificio de Seguridad Pública.*

e. Resolution No. 241- 2015

A resolution authorizing the City Manager to accept a proposal and execute an agreement with Kenneth B. Salzmann, LS for Surveying Services at the City's reservoirs in the amount of \$1,300.00. (Chad Wade)

*A resolución autorizando al Gerente de la Ciudad a aceptar una propuesta y llevar a cabo un acuerdo con Kenneth B. Salzmann, LS por servicios de exploración en la represa de la Ciudad en la cantidad de \$1,300.00*

4. Agreements and Grants/Acuerdos & Becas:

a. Resolution No. 242-2015

A resolution dedicating a portion of Chambers Street from Farrington Street to South Street as Julius H. Robinson, Sr. Avenue in honor of the City of Newburgh's first African-American plumber. (City Council)

*Una resolución dedicando una parte de la calle Chambers desde la calle Farrington hasta la calle South y nombrando esa parte la avenida Julius H Robinson. Sr, en honor al primer plomero Afro-Americano en la Ciudad de Newburgh.*

b. Resolution No. 243-2015

A resolution authorizing the City Manager to enter into a license agreement with the Youth Empowerment Center for the first floor of 104 South Lander Street. (Mayor Kennedy)

*Una resolución autorizando al Gerente de la Ciudad a entrar en un contrato de licencia con el Centro de Empoderamiento de la Juventud por el primer piso de la calle Sur de Lander.*

c. Resolution No. 244-2015

A resolution authorizing the City Manager to accept a proposal from O'Connor Davies for an audit of the New York State Office of Parks, Recreation and Historic Preservation Clean Water/Clean Air Bond Act Program Grant Contract No. C569943 in connection with the Newburgh Landing and Waterfront Park Improvements Project amending Resolution No: 296 - 2014, the 2015 budget for the City of Newburgh, New York to transfer \$3,000.00 from general fund contingency to City Comptroller – Consultants Services. (John Aber)

*Una resolución del Gerente de la Ciudad a aceptar una propuesta de O'Connor Davies para una auditoria de la Oficina del Estado de Nueva York de Parques, Recreación y Preservación de Agua Limpia/Beca del Programa del Acta de Bono de Aire Limpio con el número de contrato C569946 en conexión con el desembarcadero de Newburgh y el Proyecto de mejoramiento del Parque de Frente Marino enmendando Resolución Numero: 296 – 2014, el Presupuesto del 2015 de la Ciudad de Newburgh, Nueva York para transferir \$3,000.00 de fondos generales imprevistos al Contralor de la Ciudad – Servicios de Consulta (John Aber)*

d. Resolution No. 245- 2015

A resolution authorizing the execution of a release of restrictive covenants and right of re-entry from a deed issued to the Church of St. Mary to the premises known as 184 N. Miller Street (section 11, block 2, lot 23). (Michelle Kelson)

*Una resolución autorizando la excusión de la liberación de convenios restrictivos y derechos de entrada en una escritura publicada a la Iglesia de la Santa Maria por la propiedad conocida come el 184 N. de la calle Miller (sección 11, bloque 2, lote 23)*

5. Economic Development and Planning:

a. Resolution No. 246 -2015

A resolution amending Resolution No. 103-2015 of May 11, 2015 authorizing an amendment to the terms of sale and an extension of time to close title on the conveyance of real property known as 258 Liberty Street rear (Section 18, Block 6, Lot 29) at private sale to Dan Gilbert for the amount of \$500.00. (Deirdre Glenn)

*Una resolución enmendando Resolucion número 103-2015 del 11 de Mayo del 2015 autorizando una enmienda a los términos de venta y una extensión de tiempo para completar el título en el convenio de bienes raíces conocido come la parte trasera del 258 de la calle Liberty (sección 18, Bloque 6, Lote 29) en una venta privada a Dan Gilbert por la Cantidad de \$500.00 (Deirdre Glenn)*

b. Resolution No. 247- 2015

A resolution authorizing the award of a bid and the execution of a contract with Sun-Up Enterprises, Inc. for the Delano-Hitch Recreation Park Basketball Courts Improvements Project at a base bid cost of \$169,310.00. (Deirdre Glenn and Derrick Stanton)

*Una resolución autorizando la adjudicación de una propuesta y la ejecución de un contrato con Sun- Up Enterprises, Inc. por el Proyecto de Mejoría de las Canchas de Baloncesto del Parque de Recreacion de Delano Hitch, al costo inicial de la propuesta de \$169, 310.00 (Deirdre Glenn y Derrick Stanton)*

6. Recreation:

a. Resolution No. 248 – 2015

A resolution authorizing the City Manager to accept donations in support of the Recreation Department's Traveling Sports Program. (Derrick Stanton)

*Una resolución autorizando al Gerente de la Ciudad a aceptar donaciones en apoyo al Programa de Deportes Movibles del Departamento de Recreación.*

7. Discussion Items:

- a. Reappointment of Elizabeth Berardinelli to the Board of Assessment Review.

*Nuevo nombramiento de Elizabeth Berardinelli al Consejo Administrativo de Repaso de Valoración*

- b. Water Street Option to Purchase Agreement. (Michelle Kelson)  
*opción contacto de compra de la calle water*

- c. Spending and hiring freeze. (Councilwoman Holmes )  
*Congelo de nuevos empleos y gastos*

8. Executive Session:

- a. Proposed/Pending litigation/*Litigio Pendiente*
- b. Collective Bargaining/Negociación Colectiva

RESOLUTION NO. 237, 5015

OF

SEPTEMBER 28, 2015

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH  
TO DECLARE ITSELF LEAD AGENCY UNDER THE STATE ENVIRONMENTAL  
QUALITY REVIEW ACT (SEQRA) WITH RESPECT TO THE NORTHEAST  
ORANGE COUNTY INTERMUNICIPAL WATER SUPPLY PROJECT**

**WHEREAS**, the City of Newburgh, the Town of Newburgh, and the Town of New Windsor (the “Municipalities”) share a particular interest in water supply and the prospects of constructing interconnections for drinking water supply and upgrading the City of Newburgh’s water treatment facility (the “Northeast Orange County Intermunicipal Water Supply Project” or the “Project”) which would serve the Municipalities and their customers including the Town of Cornwall and the Town of Marlboro and would provide a sustainable return on investment for all involved parties; and

**WHEREAS**, by Resolution No. 98-2015 of April 27, 2015, the City Council of the City of Newburgh declared its intent to serve as lead agency for the environmental review of the proposed Project pursuant to 6 NYCRR 617.6, classified the action as Unlisted for which a coordinated review is necessary, proposed to accept the environmental assessment form (“EAF”) annexed thereto, and authorized the City Manager to circulate the proposed EAF and letter of intent to the Involved and Interested Agencies; and

**WHEREAS**, on or about May 26, 2015, letters declaring the intent of the City Council of the City of Newburgh to serve as lead agency in the SEQRA review of the proposed Project were sent to all involved and interested agencies giving them thirty (30) days to respond as provided by the SEQRA regulations; and

**WHEREAS**, the only involved or interested agency to respond within said thirty (30) days was the Town of New Windsor, which objected by letter dated June 24, 2015, to the City Council of the City of Newburgh serving as lead agency in the SEQRA review of the proposed Project; and

**WHEREAS**, by letter dated August 26, 2015, the Town of New Windsor withdrew its objection to the City Council of the City of Newburgh serving as lead agency in the SEQRA review of the proposed Project, after the City of Newburgh agreed to make certain modifications in the EAF; and

**WHEREAS**, the New York City Department of Environmental Protection (“NYCDEP”) intends to provide funding for environmental and engineering studies and design and, subsequently,

construction of the Northeast Orange County Intermunicipal Water Supply Project in the form of two consecutive Intergovernmental Agreements (IGA's); and

**WHEREAS**, the first proposed IGA between NYCDEP and the City of Newburgh will be for funding the environmental review and design of the Project, which review and design is exempt from SEQRA under 6 NYCRR 617.5(c)(21), which exempts from review concurrent environmental, engineering and feasibility studies and preliminary planning and budgetary processes that do not commit the City to engage in or approve construction; and

**WHEREAS**, based upon the results of the overall environmental, engineering and design studies work, DEP has indicated it would be prepared to enter into a second IGA to fund the construction of the Project if approved by the Municipalities, which IGA will require environmental assessment under SEQRA;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Newburgh as follows:

1. That the City Council of the City of Newburgh declares that it will serve as the Lead Agency in the environmental review under SEQRA for the construction phase of the Project; and

2. That the City Manager is instructed to utilize the funds to be received from NYCDEP under the first IGA, in part, to research and develop the information necessary to provide a complete environmental review of the proposed Project, including the long-term safety and security of the City's water supply.

RESOLUTION NO.: 238 - 2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE  
A LICENSE AGREEMENT WITH PRECISION PIPELINE SOLUTIONS, LLC  
TO ALLOW ACCESS TO CITY-OWNED PROPERTY LOCATED 360 LIBERTY STREET  
DURING A GAS MAIN REPLACEMENT PROJECT ON LIBERTY STREET  
PERFORMED ON BEHALF OF CENTRAL HUDSON ELECTRIC AND GAS**

**WHEREAS**, the Precision Pipeline Solutions has requested access to City-owned property located at 360 Liberty Street and identified as Section 12, Block 1, Lot 26, on the tax map of the City of Newburgh for the purpose of temporary storage of pipe, equipment and related material for a gas main replacement project for Liberty Street performed on behalf of Central Hudson Electric and Gas; and

**WHEREAS**, such access to the subject property is requested through November 1, 2015 and requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of hereof; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with Precision Pipeline Solutions to allow access to City-owned property located at 360 Liberty Street for the purpose of temporary storage of equipment and materials as a staging area for a gas main replacement project for Liberty Street performed on behalf of Central Hudson Electric and Gas.

## LICENSE AGREEMENT

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, two thousand and fifteen by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and PRECISION PIPELINE SOLUTIONS, LLC, a private business organization having an address at 617 Little Britain Road, Suite 200, New Windsor, New York 12553 and its consultants and sub-contractors, as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to the premises of Licensor on behalf of itself and its employees, agents and contractors in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following address:

Property identified as lands of the City of Newburgh, 360 Liberty Street, Section 12, Block 1, Lot 26 on the tax map of the City of Newburgh;

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

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property identified as 360 Liberty Street, Section 12, Block 1, Lot 26, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary and for the use of said property for the storage, parking, operation and management of vehicles, equipment and materials as a staging area for a gas main replacement project for Liberty Street performed on behalf of Central Hudson Electric and Gas.

Second: Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

Third: Licensee hereby agrees to defend, indemnify and hold Licensor harmless against any claims, actions and proceedings brought against Licensor arising out of, in connection with and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability insurance naming the Licensor as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Fourth: Licensee may retain certain employees, agents, contractors and consultants to perform the subject work. In the contract by which Licensee retains such agents, contractors and/or consultants, Licensee and such agents, contractors and/or consultants shall name and/or treat and hold Licensor as additional insured under insurance coverage concerning Licensee's performance of the tasks referenced herein.

Fifth: This Agreement and the license or privilege hereby given shall expire and terminate upon the later of November 1, 2015 or the completion of the project by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Sixth: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

Seventh: Without limitation to the general provisions of this Agreement, it is understood and agreed that said staging work shall be performed in substantially the location of 360 Liberty Street, Section 12, Block 1, Lot 26, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

Eighth: Licensee agrees to give Licensor no less than twenty-four (24) hours advance notice of its intention to enter upon the subject property and to perform the subject work.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By: \_\_\_\_\_  
Michael G. Ciaravino, City Manager  
Per Resolution No.

PRECISION PIPELINE SOLUTIONS, LLC

LICENSEE

By: \_\_\_\_\_  
Name:  
Title:

RESOLUTION NO.: <sup>239</sup>\_\_\_\_\_ - 2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH  
MCINTOSH CONTROLS CORP. D/B/A SMART COVER SYSTEMS FOR  
A REMOTE RESERVOIR LEVEL MONITORING SYSTEM  
AT A COST OF \$12,583.00**

**WHEREAS**, the City of Newburgh wishes to accept a proposal and executed an agreement with McIntosh Controls Corp. d/b/a Smart Cover Systems to purchase and install a remote reservoir level monitoring system for the City's reservoirs known as Washington Lake and Brown's Pond; and

**WHEREAS**, Smart Cover Systems will provide the City with real-time continuous remote sensing, alarming devices, an easy-to-use web based interface, and long and short term data collection and analysis to improve the City's water and wastewater management; and

**WHEREAS**, the proposal includes the equipment, installation, monitoring and training at a cost of \$12,583.00 with such funding to be derived from F.8320.0208; and

**WHEREAS**, this Council has reviewed the same and has determined that accepting the proposal and entering into an agreement is in the best interests of the City of Newburgh and its further development;

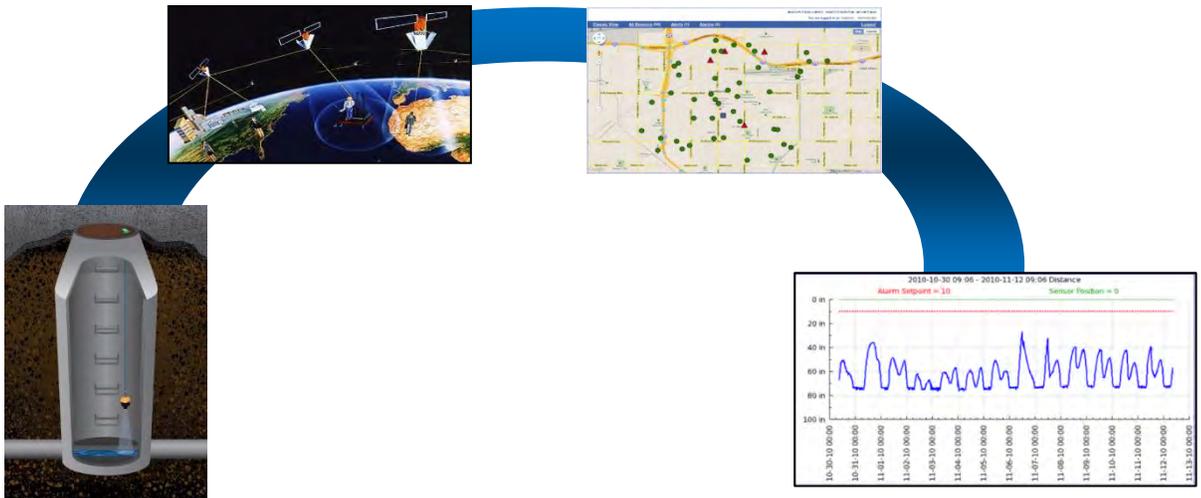
**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized accept the proposal and to execute an agreement with McIntosh Controls Corp. d/b/a Smart Cover Systems for the purchase and installation of a remote reservoir level monitoring system at a cost of \$12,583.00.

## QUOTATION

For

**CITY OF NEWBURGH NY**  
**JASON MORRIS**  
Offered by McIntosh Controls Corp.

**SmartCover<sup>®</sup>**



**Quotation Date: September 4, 2015**  
**Quote Validity: 60 days.**  
**By: Rich Mattesky**

## Section I: Pricing

**SmartCover® Systems™ (SCS)** is pleased to provide the following Proposal for **SmartCover®** level monitoring system. Please find in this document: Pricing Summary as shown in Section 1, a complete System Description in Sections 2-5, Warranty statement in Section 6, and Acceptance in Section 7.

### Pricing Summary: SmartCover®

Part Number	Description	Unit Qty.	Unit Price (Each)	Extended
SC-Q-L-25-ENCLN4SS	<b>SmartCover® System Components</b> <b>E-Box System Control</b> with onboard computer, modem, digital radio; fully potted and IP-68 rated. <b>Distance Sensing Module (DSM)</b> with 11" to 240" sensor range, with 25' cable. <b>PowerPack®</b> - lithium thionyl chloride battery with high power density. <b>E-Square™ antenna</b> , including antenna and installation kit. <b>Mounting bracket kit</b> - three-part amounting bracket set made of heavy gauge, hard-anodized aluminum; includes all mounting hardware. <b>Enclosure- Ebox, PowerPack will be prewired and mounted in Nema 4 stainless steel enclosure</b>	2	\$4,998	\$9,996.00
Parts Warranty	<b>One (1) Year, Parts-Only Warranty</b> Limited Parts-Only Warranty on all system SmartCover® hardware. See Warranty Statement for complete details.	2	Included	Included
ASM-SC1	<b>Active Site Management (ASM), One-Year:</b> Comprehensive support services including: <ul style="list-style-type: none"> <li>• Software subscription with <i>unlimited number of users</i> accessed with secure user name and password</li> <li>• Complete maintenance of all cloud based software</li> <li>• Regular feature updates and upgrades including the all new <i>SmartTrend™</i>.</li> <li>• Hosting of data storage – unlimited data storage</li> <li>• Iridium Satellite connectivity service with bi-directional communication.</li> <li>• Advisories, Maintenance Alerts and Alarms issued to customer defined personnel via email and/or text message</li> <li>• Ongoing technical support via phone or online.</li> </ul>	2	\$364	\$728.00
IST-1	<b>Dedicated Customer Website: Initial Set-up &amp; Training (IST)</b> <ul style="list-style-type: none"> <li>• Dedicated Customer Website set-up and training</li> <li>• Browser-based, secure user access</li> <li>• Includes map view, site-specific data and information</li> <li>• Alarm and Advisories set-up</li> <li>• Comprehensive training for login, website features and website functions</li> </ul> <i>Note: this is a one-time charge for new customers and does not apply to follow-on orders.</i>	1	\$899	\$899.00
Installation	Onsite installation labor by an SCS technician, including travel and expenses	1	\$895	\$895.00
Shipping	<b>Shipping and Handling, UPS Ground</b>	<b>1</b>	<b>\$65.00</b>	<b>\$65.00</b>
<b>TOTAL</b>	<b>All items above</b>			<b>\$12,583.00</b>

SmartCover® SERVICE OPTIONS				
<b>EW-SC1</b>	<b>Extended Parts Warranty</b> The 1 <sup>st</sup> Year Parts Warranty is included with purchase. This adds an additional year of parts-only warranty coverage for: <ul style="list-style-type: none"> <li>• E-Box System Control</li> <li>• Distance Sensing Module (DSM)</li> <li>• Antenna</li> <li>• Mounting bracket.</li> </ul> <b>NOTE: this a PARTS-ONLY Warranty. It does not include PowerPack Warranty which is separate, see below</b>	1	\$399	\$399
<b>PW-LTC1</b>	<b>PowerPack™ Warranty Extension</b> The 1 <sup>st</sup> Year Warranty is included with purchase. This adds an additional year of PowerPack™ Warranty covering the 2 <sup>nd</sup> Year	1	\$225	\$225
<b>ASM-SC1</b>	Active Site Management (ASM), 1 year additional coverage for 2 years total service.	1	\$364	\$364

**Delivery**

- **Standard: Four (4)** weeks upon receipt of a Purchase Order and with receipt of complete engineering and site information from the customer as requested.
- All customers will be notified of the shipment date upon Order Acknowledgement.
- Actual availability may vary depending on total demand. The “Standard six weeks” is not a guarantee but a good faith estimate. It is strongly recommended that order be placed as early as possible. Reasonable efforts will be made to provide earlier delivery if requested.

**Terms and Conditions**

- Payment: Net 30 days
- Late charges: A service charge of 1.5% per month will be added to all balances unpaid 30 days after invoice date. Failure to pay in accordance with these terms may void all warranties.
- Cancellations: for all orders of less than \$10,000, cancellation is accepted prior to shipment. For orders equal to or greater than \$10,000, a 15% restocking charge is applied for cancellation.
- Returns: returns are accepted with a valid Return Material Authorization (RMA) number only.

## Ongoing Annual Costs

After the first year of operation, the following fees will provide *continued comprehensive services* including **software support, data storage, upgrades, added features, and satellite connectivity and PowerPack<sup>™</sup> Warranty.**

These are *annual charges* paid prior to the start of the year.

### Active Site Management (ASM)

**ASM-SC1** **\$364**

*One-Year* software subscription, satellite connectivity, online maintenance, online S/C monitoring per unit per year.

**ASM-SC2** **\$679**

*Two-Year* software subscription, satellite connectivity, online maintenance, online S/C monitoring per unit per year for two years. This is a discounted two-year price and is paid in-full at the beginning of the services period.

### PowerPack Warranty

**PowerPack<sup>™</sup> Warranty (PW-LTC1):** **\$225**

*One-Year PARTS-ONLY PowerPack Warranty* for each installation site, part-only warranty on the PowerPack<sup>™</sup> offering unlimited replacements during the Warranty term.

**PowerPack<sup>™</sup> Warranty (PW-LTC2):** **\$437**

*Two-Year PARTS-ONLY PowerPack Warranty* for each installation site, part-only warranty on the PowerPack<sup>™</sup> offering unlimited replacements during the Warranty term.

NOTE: This is a discounted two-year price and is paid in-full at the beginning of the services period.

### Extended Part Warranty

**Extended Parts Warranty (EW-SC1, Optional):** **\$ 399**

*One-Year PARTS-ONLY* covers: E-Box System Control, Distance Sensing Module (DSM), antenna, and mounting bracket.

This is a PARTS ONLY warranty extension after the first year.

NOTE: Warranty extensions must be for consecutive years. Should a warranty be purchased after any initial year where the warranty was not purchased then the previous year(s) must be additionally purchased.

**Extended Parts Warranty (EW-SC2) (Optional):** **\$ 742**

*Two-Year PARTS-ONLY* covers: E-Box System Control, Distance Sensing Module (DSM), antenna, and mounting bracket.

NOTE: Warranty extensions must be for consecutive years. Should a warranty be purchased after any initial year where it was not purchased then the previous year(s) must be additionally purchased.

NOTE: This is a discounted two-year price and is paid in-full at the beginning of the services period.

**End Section 1, proceed to Section 2, next page.**

## SECTION 2: PRODUCT DESCRIPTION

### Overview

Each SmartCover® and SmartFLOE™ System includes the following components which comprise the hardware delivered with each system:

- One (1) E-Box system control
- One (1) Ultrasonic Distance Sensing Module (DSM) with connecting cable.
- One (1) communications antenna for direct connection to the Iridium Satellite System.
- One (1) PowerPack™, a proprietary high power density lithium thionyl chloride battery
- One (1) bracket kit for either mounting flat to the underside of the manhole cover or for mounting to the manhole cover vein.
- One installation kit containing all hardware and accessories necessary to mount a single system.

**NOTE:** All references to SmartCover® below also include SmartFLOE™ unless otherwise noted.

### Item Descriptions:

#### E-Box System Control

The E-Box is the system control containing the digital satellite radio, computer and signal processing components. It is fully potted and can be completely submerged in water (IP-68 rated) It is housed in an, ABS enclosure and shock tested to 10 G's.



**SmartCover® E Box Control**

#### PowerPack™

The PowerPack™ is a high power-density battery system designed for reliable, consistent delivery of power in the harsh wastewater environment. It is housed in a urethane coated pack containing Lithium Thionyl Chloride primary batteries. Typically the PowerPack™ provides at least one year of life and generally longer under normal operating conditions. PowerPacks™ have a 10 year shelf life prior to use.



**SmartCover® PowerPack™**

**Distance Sensing Module (DSM)**

The distance sensing module is an ultrasonic distance sensor. It is enclosed and sealed in an ABS housing. It is fully potted and completely water-proof, meeting IP-68 standards. The crystal controlled oscillator sensor is self-calibrating.

There are two [distance] ranges available.

- The standard range senses between 3” and 81”
- The long-range sensor’s range is 11” to 240”.

The DSM has two standard cable lengths of 15’ and 25’. Custom lengths are available, application dependent, up to 300’. SCS Application Engineers are available to assist users to determine the correct DSM range and cable lengths.



**SmartCover<sup>®</sup> DSM**

**E-Series<sup>™</sup> Antennae**

The E-Series<sup>™</sup> antennae include the “E-Square” and the “E-Dot” types. Both are traffic rated and designed to mount directly to the manhole cover or vault lid. They communicate directly to the Iridium Satellite System and do not require any intermediary devices for boosting signals. The antennae are secured to the top of the manhole cover using a high strength, two-part acrylic adhesive specifically designed for high stress, structural applications.

The E-Square antenna is a road-reflector type used in areas where there is no opportunity for dislocation from such hazards as snow plows.

The E-Dot antenna is for cold-weather climates where snow plow operation occurs and are designed to be mounted below the manhole profile.

**E-Square<sup>™</sup> Antenna**



**E-Dot<sup>™</sup> Antenna**

### **Mounting Bracket Kit**

The mounting bracket is a ruggedized, corrosion resistant assembly designed to protect and secure system components. The bracket is secured with two stainless steel bolts whereby the installer drills two ¼" holes into the cover. The bracket is designed in such a manner such that **NO CONFINED SPACE ENTRY IS REQUIRED FOR INSTALLATION**. Its hard-anodized aluminum housing encloses the PowerPack and the E-Box control. The DSM (distance sensing module) is connected to the E-Box and suspended via a cable, typically over the invert.

The bracket is supplied as a three-piece kit for mounting directly to the underside "flat" of the manhole or, alternately, to the manhole cover vein.



**Bracket with kit**



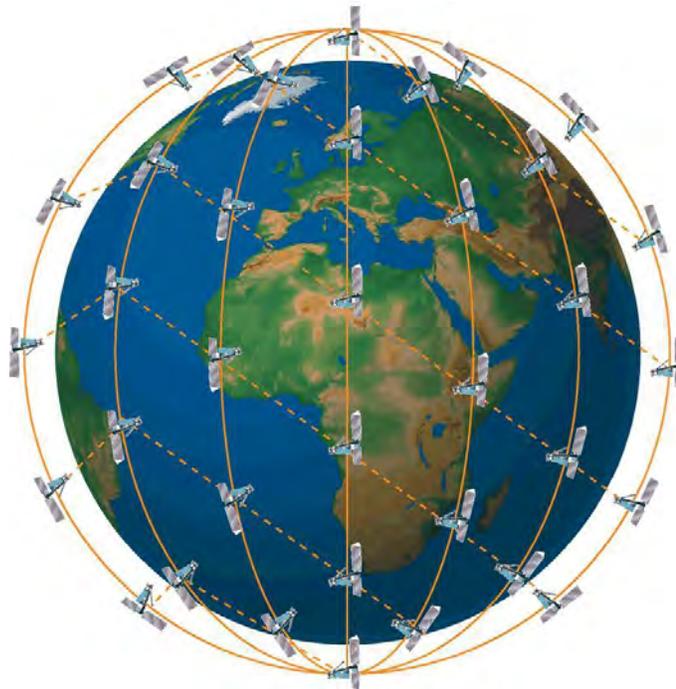
**Mounted Bracket**

### SECTION 3. DESCRIPTION OF THE SATELLITE COMMUNICATION SYSTEM

The SmartCover<sup>®</sup> system uses the high reliability, highly secure **Iridium Satellite System** as its communications backbone. Iridium is a state-of-the-art communications system consisting of 66 Low Earth Orbiting (LEO) satellites. It has global, redundant coverage and is known to provide highly superior connectivity to that of terrestrial systems such as GSM, GPRS and other cell phone based systems. Iridium has a very strong record of performance and reliability. It is used by the US DOD for its reliability.

Iridium Satellites are in orbit across the globe and assured connectivity is achieved requiring but a small fraction of the available horizon. SmartCover<sup>®</sup> systems are able to communicate in challenging locations with such impediments as tree canopies, overpasses or buildings.

SmartCover<sup>®</sup> data is highly secure with servers using 2048 bit encryption. These are redundant servers located in a climate controlled, secure facility with emergency power to prevent any interruptions. Servers store Historical Communication, Data, and Data Access information. Being a web or “cloud” based system; data is available at all times through a browser from a computer, tablet or phone. Users can access data through any web browser to the server via encrypted data and send notifications directly to the user.



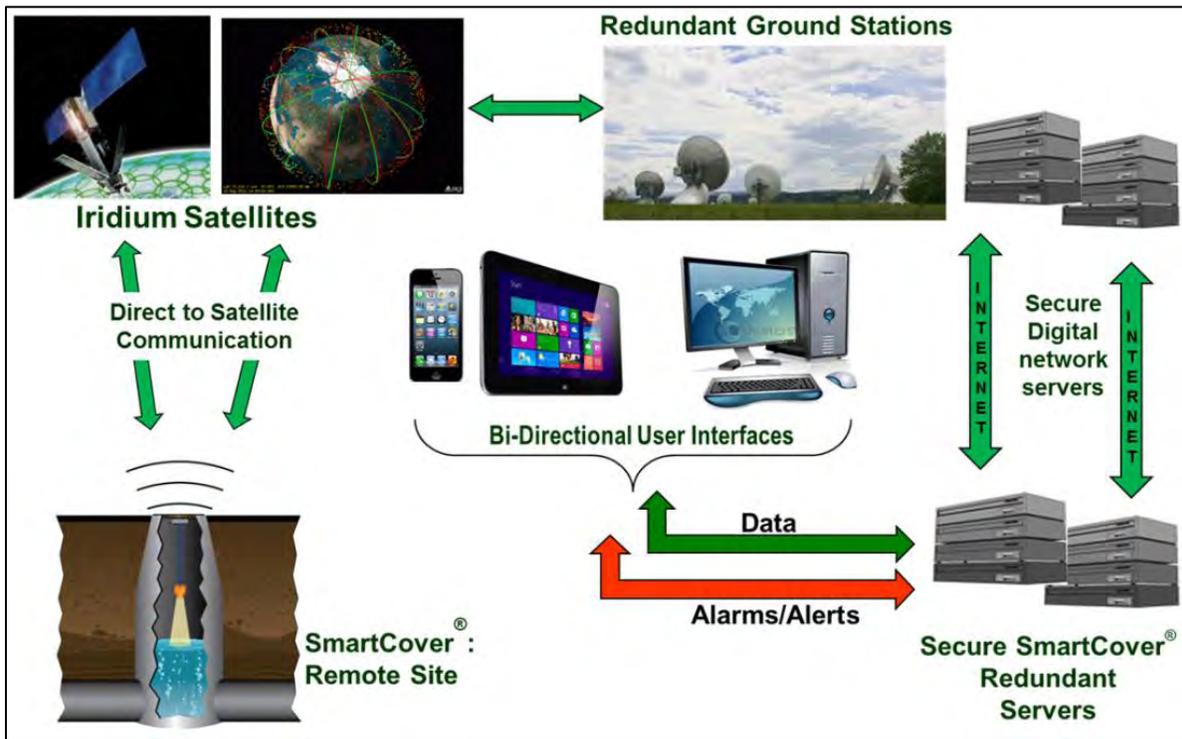
**Iridium Satellite Constellation**

**The Communication Process**

As per the diagram below, the SmartCover® system communicates directly to an orbiting satellite. The communication signal is then sent to Iridium earth link stations and then to SCS secure servers.

For alarm signals, they are subsequently sent to the Customer via cell phone, Smart Phone, digital pager and/or to computers via the internet. It is possible to have alarms sent to a central control room as well.

SmartCover® communication is *bi-directional and the user has control over the remote sites*. A major benefit of the SCS system is that data acquisition, alarms and system setting changes are enabled *remote from the installation site* saving time and resources. For example, the alarm level [distance] setting can be accessed via the Dedicated User Website to be changed or disabled. Changes to these settings are communicated from the SCS servers through the Iridium system and to the SmartCover® system at the designated site.



SmartCover® communications system diagram

## SmartCover<sup>®</sup>: Measurement, Data Acquisition, Transmission and Process Overview

The SmartCover<sup>®</sup> system monitors continuously 24 hours per day, seven (7) days per week. SCS has cumulatively acquired thousands of years of data and experience with this basic measurement protocol to assure users that this methodology is extremely sound and reliable for ongoing data acquisition and alarming functions.

### Measurement Frequency

The SmartCover<sup>®</sup> system takes a measurement every six (6) minutes. If the measured level is below the pre-set alarm level then the cycle begins again.

### Data Acquisition Frequency

The SmartCover<sup>®</sup> logs alternate readings of the six (6) minute measurement cycle. In other words it log a measurement every 12 minutes, five (5) times per hour. These readings are “batched” and sent once per hour via satellite to the server and stored for user access such as trending and analysis.

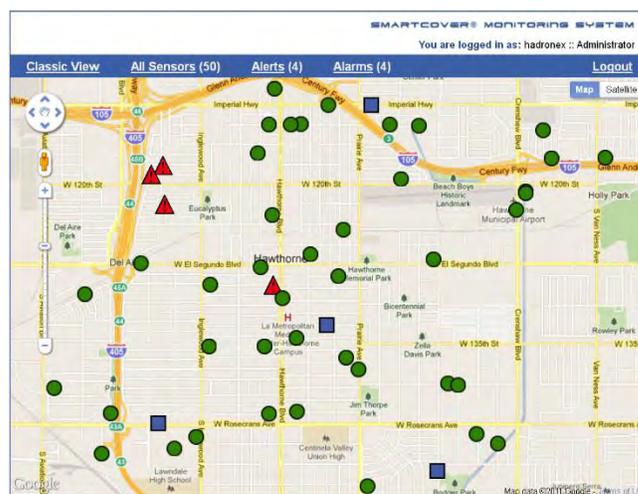
### Alarming

If the SmartCover<sup>®</sup> system measures and senses that the water it is *above* the alarm level, an alarm notification is sent to the designated users and by a pre-established communication protocol i.e., text message to a mobile device or an email message to a computer. Alarms through cell phones or pagers are via Short Message Service (SMS), or Smart Phones and emails via email messaging. Alarms will continue to be sent until acknowledged. The system will continue to monitor, even though the alarm has been acknowledged. Note: a dedicated direct-from-satellite handheld system is available option for highly critical communications. Contact SCS for more information.

**A LEVEL MEASUREMENT IS TAKEN EVERY 6 MINUTES AND DATA IS UPDATED ON THE SERVER EVERY HOUR. IN THE EVENT OF A HIGH WATER EVENT, THE ALARM IS SENT THE NEXT TIME A LEVEL MEASUREMENT IS MADE. THE LONGEST TIME BETWEEN THE TIME THE WATER REACHES THE ALARM LEVEL AND WHEN THE ALARM SOUNDS IS 5 MINUTES AND 59 SECONDS.**

### Graphical Data

The website is accessed by designated users through a secure portal and using a user name and password. Upon login a map of the system appears as shown below.



**System Map**

### System Map

The system map has five, colored-coded symbols for ease of viewing and management where:

**GREEN (circle)** – Indicates that the SmartCover® system is functioning properly and that the site does not have any alarms or maintenance alerts.

**GRAY (circle)** – Indicates that the SmartCover® system was previously located at this site but has been moved. The data for this site is archived and accessible.

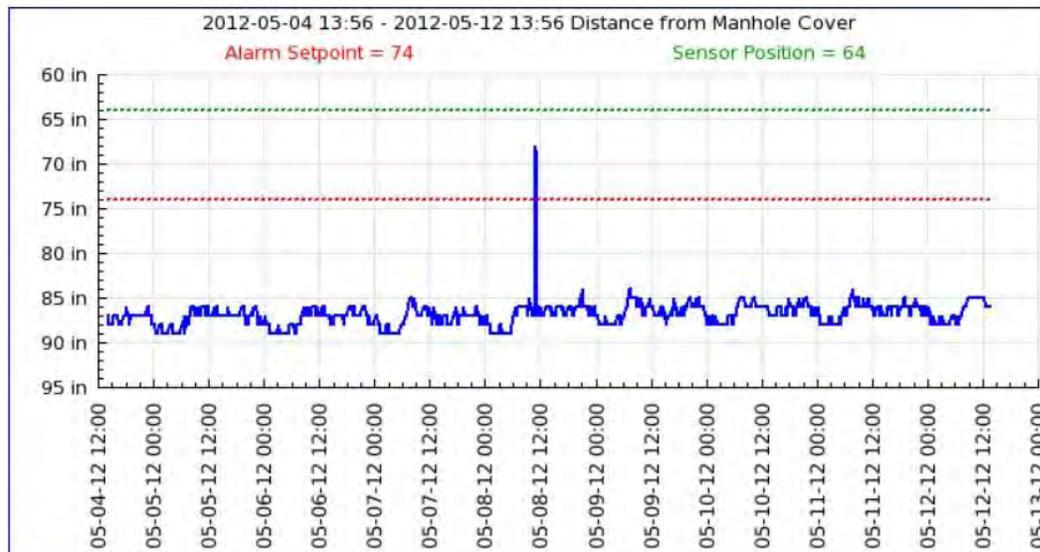
**ORANGE (circle)** – Indicates that the SmartCover® system, while not in an Alert or Alert state, has issued an “Advisory”. The Advisory is an email message has been sent because the site data trend indicates that an anomaly is occurring. It advises users to view this site’s data and determine what, if any, remedial action should be taken.

**BLUE (square)** – Indicates an “alert” and that a SmartCover® maintenance action is required. For example, it could mean the battery has low voltage and needs to be replaced or that a unit has not communicated within the expected interval.

**RED (triangle)** – Indicates that an “alarm” condition exists at this location. It could be high water event (surcharge) or an intrusion. Action is required.

### Site Graph

A user may access any remote site by clicking on the map or on the address location. As an example, the graph below illustrates level in inches (y-axis), date/time (x-axis), flow levels (blue line), and the alarm setting (red line). We see in this case flow levels are below the alarm and then followed by a surcharge. The surcharge would have triggered an alarm. Note that the alarm is set well below the level where a spill may occur (green line) and allows for sufficient time to respond. In this case the bottom of the sensor is 64 inches from the manhole cover and the alarm is set for 74 inches below the manhole cover.



## SECTION 4. INSTALLATION AND ACTIVATION

### ***Installation***

It is most important to note that the SmartCover installation never requires confined space entry. With this, a typical installation is inexpensive and takes much less than one hour for physically attaching of the SmartCover<sup>®</sup> system. The antenna is mounted to the top of the cover or lid and the mounting bracket, housing the PowerPack and E-Box with the DSM connected to the E-Box, to the bottom.

The antenna is mounted and secured with a high strength, MIL-Spec grade, two part adhesive and a hole is drilled to feed the antenna wire to the underside where the E-Box control is located.

The bracket is mounted to the underside by drilling to two holes into the cover or lid. Two stainless steel screws secure the bracket. The DSM is connected to the E-Box control and it is suspended and aligned to the flow target area i.e., the invert.

On-site testing of the communication link is performed to ensure that the unit is operational.

- **Standard Installation:** The SmartCover<sup>®</sup> system (hardware) is installed in the field at the designated site.
- **Offsite Installation:** The SmartCover<sup>®</sup> system is installed on the selected cover at an offsite facility and transported to the designated location. This method can minimize onsite time to a few minutes reducing the need for traffic control and disruption.
- Typically, the Customer will provide personnel and equipment, as appropriate for traffic control as required by local regulations and safety of field personnel.

### ***Activation***

After the physical installation of the SmartCover<sup>®</sup> system(s), the following actions are taken to bring full functionality to the SmartCover<sup>®</sup> system. SCS technicians will assist with all installation activation as part of our standard service protocol.

- ***SmartCover<sup>®</sup> Activation: Customer Actions***
  - Upon receipt of a Purchase Order, SCS the user will receive a questionnaire to obtain the information necessary to perform the SmartCover<sup>®</sup> service Set-Up. Proper system operation is dependent upon receipt of required information.
  - This information is used as part of installation where communication will be tested to verify functionality.
- ***SmartCover<sup>®</sup> Activation: SCS Actions***
  - At the SCS technical Support offices, the secure Customer Web Site is set up including a private account and database on the SCS secure server.
  - Web site is configured for the Customer Web Site with SmartCover<sup>®</sup> system locations and users.
  - Initial population of the Customer SmartCover<sup>®</sup> database.
  - Registration of the SmartCover<sup>®</sup> system wireless radios with the network and setting the Customer default system operational parameters.

### ***Training***

Training is provided after completion of the installation process. Once on-site personnel are trained, SCS will be available to provide additional web site training remotely after the SmartCover<sup>®</sup> system has been installed and operational.

## SECTION 5. ACTIVE SITE MANAGEMENT

Active Site Management (ASM) is a **compressive support service** for the SmartCover<sup>®</sup> system. It includes software support, satellite connectivity and ongoing technical support with these three elements described below.

It is an annual, per site service provided by SCS. ASM includes but is not limited to:

- **Website hosting-** initial set-up and ongoing hosting of all software and customer data. Note that all data is owned by the customer.
- **Website / Software Upgrades-** from time to time SCS provides new features and tools at no charge including such features supporting improved analytical tools, improved graphical tools and new reports.
- **Website maintenance** – maintaining the secure servers on which your web site resides, and providing free upgrades to the web sites as they become available.
- **Standard Reports** - SCS will support Customer in the preparation of these reports for management or regulators **Technical Telephone Support** - This service is offered by the SCS Technical Services team from 7am to 5 pm Pacific time and with additional support from local representatives.
- **Management Oversight**
  - SCS Technical Services team monitors the proper operation of all installed systems including battery voltage, the radio signal strength and the communication to/from the systems.
  - SCS coordinates the appropriate service to repair any components in the field with you or the local dealer
- **Alarm Processing** – maintaining the infrastructure of the alarm contact system.
- **After Hours Support** – on an as-needed basis. Contact SCS for details
- **Wireless Communications Connectivity** – Access to the two-way, wireless satellite network.

### Product Improvements

The SmartCover<sup>®</sup> is continuously improving, adding new features and functions. SCS often uses customer input to add new features. Product improvements are backwards compatible to existing satellite systems with 0.10” resolution. There is no charge for these improvements as they are part of the annual ASM.

### SmartTrend<sup>™</sup>

**SmartTrend<sup>™</sup>** is an all-new addition to **SmartCover<sup>®</sup>** that enables notifies and enable users to anticipate events at remote monitoring sites. **SmartTrend<sup>™</sup>** automatically scans each remote site to assess data trends. Should it see an “anomaly”, it provides users an Advisory email message. This important addition to the **SmartCover<sup>®</sup>** system means that users now have the most advanced predictive method available identifying future issues such as SSO days or even weeks *before they occur*.

## **SECTION 6. ADDITIONAL TERMS & CONDITIONS, LIMITED WARRANTY**

### ***Mutual Hold Harmless***

SCS hereby holds Customer harmless from any and all claims that may arise, or damages that may result, to SCS or SCS staff during the performance of this contract. Customer hereby holds harmless SCS/McIntosh, its founders, owners and staff, from any and all claims that may arise, of any kind or from any cause whatsoever, due to or as a result of the installation, operation, or use of the SmartCover<sup>®</sup> system.

### ***Loss of Communications***

Customer acknowledges that SCS/McIntosh is not responsible for the loss of wireless communication or internet communications or any communications used in the operation of this system.

### ***Advisory Only***

The SmartCover<sup>®</sup> System is an advisory service only. As such, SCS/McIntosh and its founders, owners, or staff are not responsible for any damage of any kind or from any cause whatsoever that may result from, in relation to, in connection with, due to, or as a result of the installation or operation of the system, including without limitation, equipment failure, or any consequential damages caused by, or resulting from, the use or installation of the SmartCover<sup>®</sup> system.

### ***Limited Warranty***

The equipment components of the SmartCover<sup>®</sup> system are warranted free from material defects of material and workmanship for a period of one year from the date of installation. Unless otherwise stated, the SCS warranty herein is a parts-only warranty.

Should the Customer discover any condition that might invoke a warranty claim, they are to expeditiously and without delay notify the SCS Technical Services group.

Upon notification, SCS will assess and instruct the user on follow-on actions.

Should a component fail as a result of a defect in material or workmanship, SCS will replace the component or repair it at the SCS location.

For all valid warranty claims, as determined by SCS, reasonable freight charges to and from Customer shall be paid by SCS. In all cases, SCS shall determine the shipping method and/or carrier unless otherwise agreed to in writing by Customer and SCS.

Upon approval of a warranty failure by SCS, SCS will either repair or replace the defective component at SCS' sole discretion.

**THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). REPAIR OR REPLACEMENT IN THE MANNER PROVIDED ABOVE SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY AND SHALL CONSTITUTE FULFILLMENT OF ALL LIABILITIES OF SCS WITH RESPECT TO THE QUALITY AND PERFORMANCE OF THE PRODUCTS.**

**THIS WARRANTY DOES NOT COVER DAMAGE OR REPAIRS OR REPLACEMENTS BY ANY CAUSE BEYOND THE CONTROL OF SCS, INCLUDING ACTS OF NATURE, IMPROPER USE, LACK OF PROPER MAINTENANCE OR UNAUTHORIZED REPAIR.**

**REPLACEMENT AS PROVIDED UNDER THIS WARRANTY IS THE EXCLUSIVE REMEDY. SCS SHALL NOT BE LIABLE FOR ANY ACTUAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF GOODWILL OR PROFITS AND/OR LOSSES FROM ANY CAUSE WHATSOEVER, EVEN IF SCS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**

In no event shall SCS's liability, whether in contract or in tort (including negligence and strict liability), exceed the price of the Product from which such liability arises.

**SECTION 7: Acceptance**

**The undersigned have read and acknowledge their understanding of this offer.**

**Signatures**

**McIntosh Controls Corp**

**City of Newburgh NY**

Signature  
**Richard Mattesky**  
**9/4/15]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

RESOLUTION NO.: 240 - 2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL AND EXECUTE AN AGREEMENT WITH  
QUALITY ENVIRONMENTAL SOLUTIONS & TECHNOLOGIES, INC. (QUES&T)  
FOR PROFESSIONAL SERVICES RELATED TO ASBESTOS, LEAD PAINT AND  
MICROBIAL SAMPLING AND SURVEYS IN CONNECTION WITH  
A LOCKER ROOM RENOVATION PROJECT IN THE PUBLIC SAFETY BUILDING**

**WHEREAS**, the City of Newburgh wishes to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. (QUES&T) to perform limited bulk sampling of suspect Asbestos-containing Materials (ACM) and lead-paint and microbial surveys in connection with the conversion of a former closet area to a locker room shower located in the Public Safety Building; and

**WHEREAS**, the cost for these services will be \$1,646.00 which shall be derived from the 2013 BAN; and

**WHEREAS**, the City Council has reviewed the annexed proposal and has determined that such work would be in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Quality Environmental Solutions & Technologies, Inc. for professional services related to asbestos, lead paint and microbial sampling and surveys in connection with this locker room renovation project located within the Public Safety Building.

# QuES&T

Quality Environmental Solutions & Technologies, Inc.

September 16, 2015

City of Newburgh  
83 Broadway  
Newburgh, NY 12550

**ATTN: Jason C. Morris**

Via E-mail: [JMorris@cityofnewburgh-ny.gov](mailto:JMorris@cityofnewburgh-ny.gov)

Re: Public Safety Building, 55 Grand Street, Newburgh, NY 12550 – Closet Conversion Project  
Request for Proposal – Limited Pre-Renovation Asbestos, Lead-Based Paint & Mold Surveys

Dear Mr. Morris,

Quality Environmental Solutions & Technologies, Inc. (**QuES&T**) is pleased to submit the attached proposal to perform limited Asbestos, Lead-Based Paint and Mold Surveys to support the above-referenced project.

**QuES&T** is a NYS Certified Minority Business Enterprise committed to remaining a leader in the environmental training and technical consulting industry. **QuES&T's** extensive Nuclear Power Industry experience makes us uniquely qualified to provide technical support in state-of-the-art techniques for engineering and contamination control. Additionally, this experience enables us to integrate the essential concepts of "critical path" schedules and minimizing personnel exposures while maintaining a high level of attention to the specific details of each project. **QuES&T** personnel satisfy numerous ANSI and NUREG experience requirements of the Nuclear Regulatory Commission. Our staff has served in various capacities in the Health Physics and Nuclear Engineering disciplines in operational power reactors, nuclear powered vessels, radio-pharmaceuticals and government prototypes.

We are confident you recognize that selection of a qualified technical consultant for professional services, such as pre-construction inspection, project design, project management and air monitoring, represents a step as critical as selecting a reputable environmental remediation contractor. **QuES&T** feels strongly that the success of any remediation project is defined primarily in the planning and design phase. A technically sound project design combined with proper oversight provides the most cost-effective solution and ensures the gains recognized are not at the expense of future liability to the City of Newburgh.

In this regard, **QuES&T** has successfully completed remediation projects, for our client companies, in support of Nuclear and Fossil commercial power plant maintenance outages, facility renovation and demolition, cGMP facility upgrades, recovery from contamination following catastrophic events (e.g. steam line explosions, fires), school building renovations, Corporate asbestos management programs, facility Operations & Maintenance (O&M) programs, UST removals, sub-surface investigations, contaminated soil remediation, LBP stabilization and commercial/residential asbestos & lead abatements.

Technical consulting services are available in the area of regulatory compliance audits, OSHA safety, air monitoring, respiratory protection, laboratory services, building hazard assessments (EPA, HUD, commercial), LBP Risk Assessments, management plans, NYS/NESHAP pre-demolition inspections and full scope project management; including development of remediation response actions and management of all required project and personnel records. Our staff of experienced environmental professionals can prepare all required specifications and procedures to ensure your programs comply with federal, state and municipal regulatory requirements.

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1376 Route 9, Wappingers Falls, NY 12590 Phone (845) 298-6031 Fax (845) 298-6251

NYS MWBD MBE Cert # 49952-2006 NYSUCP DBE Certified NJUCP DBE Certified [www.Qualityenv.com](http://www.Qualityenv.com)

**QuES&T** offers a wide range of OSHA and environmental safety training. Our full range of asbestos safety certification training ensures that our client's employees receive the appropriate training to maximize their safety and minimize your liability. **QuES&T** offers accredited initial and refresher training programs for Operations & Maintenance (O&M), Asbestos Abatement Workers and Supervisors, Project Monitors, Asbestos Project Sampling Technicians (RH-II), Asbestos Project Designers, Asbestos Inspectors (RH-III) and Management Planners. Our accredited training facility (EPA, NYS) contains the most modern equipment to support the hands-on portion of each training program. On-site training services are available for groups of at least twenty-five students and can be tailored to meet the specific needs of the City of Newburgh.

**QuES&T** provides a full range of services in the area of Respiratory Protection. Our technical staff has extensive experience in the development of regulatory compliance programs for NUREG 0041 and OSHA 1910.134 Respiratory Protection Programs. Quantitative or qualitative respirator fit services can be provided at **QuES&T's** facility or yours.

For additional information concerning this submittal, please contact us at (845) 298-6031. We look forward to working with the City of Newburgh in the environmental consulting and remediation services area.

Sincerely,



**Paul A. Rodriguez**

Director, Field & Technical Services  
NYS/AHERA Inspector/Project Designer  
Cert. #AH 02-04344  
EPA Lead Inspector/Lead Risk Assessor

Cc: QuES&T File

**LIMITED ASBESTOS SURVEY**  
for  
**CITY OF NEWBURGH**  
83 Broadway  
Newburgh, NY 12550  
at  
**PUBLIC SAFETY BUILDING – CLOSET CONVERSION PROJECT**  
55 Grand Street  
Newburgh, New York 12550

*QuES&T agrees to provide the following services:*

➤ **LIMITED PRE-RENOVATION SURVEYS**

■ **Item #1 – Limited Asbestos Survey**

- Provide certified NYS/AHERA Asbestos Inspector(s) to perform limited bulk sampling of suspect Asbestos-containing Materials (ACM) potentially affected by the anticipated conversion of one (1) Closet into a Shower Room, as described by Mr. Jason C. Morris, of the City of Newburgh.
- **QuES&T** will review building/structure plans and records, provided by the Owner and/or the Owner's Representative(s), for references to asbestos, ACM, PACM, suspect miscellaneous ACM or asbestos materials used in construction, renovation or repair in the affected building area(s).
- Perform limited bulk sampling of suspect Asbestos-containing Materials (ACM) in compliance with 12 NYCRR Part 56 regulations.
- Perform collection and analysis of suspect friable Asbestos-containing Materials (ACM) using Polarized Light Microscopy (PLM) analytical protocol.
- Perform collection and analysis of suspect non-friable organically bound Asbestos-containing Materials (ACM) using both Polarized Light Microscopy-NOB (PLM-NOB) and Quantitative Transmission Electron Microscopy (QTEM) analytical protocols.
- Discussion of laboratory results for all bulk samples (PLM & QTEM/PLM).
- Documentation of all analytical laboratory certifications.
- Preparation of one (1) Final Summary Report identifying estimated quantity, location, types, and condition of identified Asbestos-containing Materials (ACM).

*QuES&T Services – CONT'D*

■ **Item #2 – Limited Lead-Based Paint Survey**

- Provide Niton-certified XRF Technician(s) to perform representative In-Situ measurements using a Niton Model XLp 300A XRF Meter on painted surfaces and immovable objects potentially affected by the anticipated conversion of one (1) Closet into a Shower Room, as described by Mr. Jason C. Morris, of the City of Newburgh.
- Locations and quantity of representative In-Situ measurements will be based on the observed homogeneity of painted surfaces.
- Sequential and summary reports will be provided of all surfaces tested.
- Preparation of one (1) Final Summary Report identifying lead-based paint(s), lead-containing materials, and condition of Lead-Based Paints (LBP).

■ **Item #3 – Limited Microbial Survey**

- Provide IH Technician to perform a visual inspection to identify moisture-impacted areas and microbial growth. The visual inspection will focus on the specific areas and associated building components potentially affected by the anticipated conversion of one (1) Closet into a Shower Room, as described by Mr. Jason C. Morris, of the City of Newburgh.
- Preparation of one (1) Final Summary Report identifying findings of the visual inspection and remedial recommendations.

**LIMITED ASBESTOS SURVEY**  
for  
**CITY OF NEWBURGH**  
83 Broadway  
Newburgh, NY 12550  
at  
**PUBLIC SAFETY BUILDING – CLOSET CONVERSION PROJECT**  
55 Grand Street  
Newburgh, New York 12550

*This proposal is based on the following assumptions:*

- **QuES&T** shall perform all inspections visually; using reasonable care and judgment. Limited localized demolition will be performed to access representative concealed surfaces, as practicable. *The City of Newburgh (The Owner)* recognizes & agrees that ACM/LBP/Microbials/Etc. concealed within structural components & accessible only through extensive mechanical or structural demolition may not be identified as part of this survey.
- **QuES&T** shall not perform patching of sampling locations. *The City of Newburgh (The Owner)* may elect to hire an independent General Contractor to accompany **QuES&T** inspection personnel and perform required patching accordingly.
- **QuES&T** shall not be responsible for damage caused to building finishes, surfaces or equipment by sampling. Responsibility and cost for repair of damaged building finishes, surfaces and/or equipment shall be by *The City of Newburgh (The Owner)*.
- **QuES&T** will exercise reasonable caution to minimize disturbance of ACM/LBP/Microbials/Etc. during the inspection process. However, clean-up of ACM/LBP/Microbials/Etc. disturbed or dislodged during the inspection process shall be the responsibility of *The City of Newburgh (The Owner)*.
- *The City of Newburgh (The Owner)* responsible for providing immediate access into all inspection areas and securing same upon completion.
- Inspection work to be conducted during normal weekday “Business Hours” (M-F; 9am-5pm).
- Laboratory sample analysis turnaround times (TAT) shall be five (5) Business Days. TAT commences upon laboratory receipt of samples, and does not include weekends or holidays.
- **QuES&T** shall commence terms of this contract upon receipt of written Notice to Proceed and/or Purchase Order (PO) number.



# QuES&T

Quality Environmental Solutions & Technologies, Inc.

## I. ASBESTOS SERVICES:

### Item 1: Labor (Minimum On-site Billing; 4 Hours @ OT Rate)

- Sr. Principal: \$225/Hr ST; \$255/Hr OT
- Principal: \$185/Hr ST; \$225/Hr OT
- Project Manager: \$90/Hr ST/OT
- EPA/NYSDOL/NYCDEP Asbestos Inspector:
  - \$320/4-hr day Includes Calibrated Area A/S Equipment
  - \$500/8-hr day Includes Calibrated Area A/S Equipment
  - \$ 80/hr OT
- EPA/NYSDOL Combined Project Monitor/Air Sampling Technician:
  - \$275/4-hr day Includes Calibrated Area A/S Equipment
  - \$400/8-hr day Includes Calibrated Area A/S Equipment
  - \$ 75/hr; OT

### Item 2: Asbestos Laboratory Services

- A/S Sample Analysis (PCM):
  - \$ 12/Sample Includes 72-hr turn-around of results
  - \$ 15/Sample Includes 24-hr turn-around of results
  - \$ 17/Sample Includes 6-hr turn-around of results
  - \$ 20/Sample Includes Rush turn-around of results.
- A/S Sample Analysis (AHERA-TEM):
  - \$100/Sample Includes 48-hr turn-around of results
  - \$125/Sample Includes 24-hr turn-around of results
  - \$175/Sample Includes 12-hr turn-around of results
  - \$225/Sample Includes 6-hr turn-around of results
- Bulk Sample Analysis (PLM):
  - \$ 14/Layer Includes 7 day turn-around of results
  - \$ 16/Layer Includes 5 day turn-around of results
  - \$ 20/Layer Includes 72-hr turn-around of results
  - \$ 25/Layer Includes 24-hr turn-around of results
  - \$ 30/Layer Includes 12-hr turn-around of results
  - \$ 45/Layer Includes Rush turn-around of results
- Bulk Sample Analysis (PLM-NOB):
  - \$ 16/Layer Includes 7 day turn-around of results
  - \$ 23/Layer Includes 5 day turn-around of results
  - \$ 30/Layer Includes 48-hr turn-around of results
  - \$ 40/Layer Includes 24-hr turn-around of results
  - \$ 60/Layer Includes 12-hr turn-around of results
- Bulk Sample Analysis (QTEM):
  - \$ 25/Layer Includes 7 day turn-around of results
  - \$ 50/Layer Includes 5 day turn-around of results
  - \$ 65/Layer Includes 48-hr turn-around of results
  - \$ 70/Layer Includes 30-hr turn-around of results
  - \$ 110/Layer Includes 12-hr turn-around of results

### NOTE A:

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

**Item 2: Asbestos Laboratory Services (Cont'd)**

- Vermiculite-Containing Spray-On Fireproofing (ELAP 198.8): Minimum Sample Size: 10g

SOF-V Analysis – NYS ELAP 198.8	Laboratory Turnaround Time					
	1 Day	2 Day	3 Day	4 Day	1 Week	2 Week
<b>Twofold Segment Analysis</b>						
Segment I: Analysis to detect and quantify Chrysotile Asbestos	\$800.00	\$500.00	\$350.00	\$315.00	\$285.00	\$260.00
Segment II: Analysis to detect and quantify Amphibole Asbestos						
Prep Fee Positive Stop at Chrysotile >1%	\$325.00	\$255.00	\$220.00	\$175.00	\$150.00	\$125.00
Prep Fee Positive Stop at Amphibole	\$525.00	\$325.00	\$270.00	\$225.00	\$200.00	\$175.00

Following identification of Vermiculite in Spray-on Fireproofing utilizing NYS ELAP NY ELAP Method 198.8 incorporates a two-step approach for the identification and quantitation of Chrysotile and Amphibole Asbestos, including Libby amphiboles, in SOF-V (Sprayed on Fireproofing – Vermiculite).

- ❖ Gravimetric reduction including ashing to remove the organic materials and dilute acid treatment to remove gypsum and cement from SOF-V.
  - The residue is then examined by PLM for the presence of chrysotile, which is quantitated by point counting.
  - If the concentration of chrysotile is found to exceed 1%, the material is considered asbestos containing material (ACM) and the analysis is terminated.
  - If chrysotile is either not detected, or is found at a concentration less than 1%, then the analysis is continued to determine the concentration of amphibole asbestos.
- ❖ Heavy liquid centrifugation is used to separate particles with densities exceeding 2.75 g/cc from the majority of the less dense matrix components. This results in a centrifugate that contains any amphibole that was present in the original sample.
  - The concentration of the amphibole is then determined by PLM and point counting.
  - The total asbestos content is obtained by adding the concentration of asbestos quantitated in step one (chrysotile) with the asbestos quantitated in step two (amphibole). If the final concentration is determined to be greater than 1%, the material is designated as ACM.

**NOTE A:**

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

## II. SAFETY & ENVIRONMENTAL SERVICES:

### **Item 1: Labor** (Minimum On-site Billing; 4 Hours @ OT Rate)

- **Certified Industrial Hygienist:** \$175/Hr ST; \$215/Hr OT
- **Certified Safety Professional:** \$175/Hr ST; \$215/Hr OT
- **EPA LBP Inspector/Risk Assessor:** \$ 90/Hr ST/OT
- **IH Tech:**
  - \$320/4-hr day Includes Calibrated Area A/S Equipment
  - \$500/8-hr day Includes Calibrated Area A/S Equipment
  - \$ 80/hr; OT

### **Item 2: Laboratory Services**

- **Lead - Air/Paint Chip/Dust Sample Analysis (AAS/FLAA):**
  - \$ 20/Sample Includes 3-5 Day turn-around of results
  - \$ 25/Sample Includes 48-hr turn-around of results
  - \$ 30/Sample Includes 24-hr turn-around of results
  - \$ 45/Sample Includes 6-hr turn-around of results
- **PCB – Bulk Material Sample Analysis:**
  - \$100/Sample Includes 5 Day turn-around of results
  - \$150/Sample Includes 3 Day turn-around of results
  - \$200/Sample Includes 48-hr turn-around of results
  - \$250/Sample Includes 24-hr turn-around of results

### **Item 3: Equipment Charges**

- Niton XRF: \$175/Day
- Electrical Generator: \$ 75/Day (2-Day Minimum)
- SCBA: \$300/Day
- Confined Space Tripod: \$ 150/Day

#### **NOTE A:**

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

### III. INDUSTRIAL HYGIENE SERVICES:

#### **Item 1: Labor** (Minimum On-site Billing; 4 Hours @ OT Rate)

- Certified Industrial Hygienist: \$175/Hr ST; \$215/Hr OT
- Certified Safety Professional: \$175/Hr ST; \$215/Hr OT
- Industrial Hygiene Scientist/CBST \$125/Hr ST; \$150/Hr OT
- Project Manager: \$ 90/Hr ST/OT
- IH Tech: \$320/4-hr day Includes Calibrated Area A/S Equipment  
\$500/8-hr day Includes Calibrated Area A/S Equipment  
\$ 80/hr; OT

#### **Item 2: Microbiological Laboratory Services**

- Air Sample Analysis (Total Spore Counts):
  - \$120/Sample Includes same-day turn-around of results
  - \$100/Sample Includes 24-48 hr turn-around of results
  - \$ 80/Sample Includes 5-7 day turn-around of results
- Air Sample Analysis (Culturable Fungi; One Medium): Sample Turn-Around Time 7-10 Days
  - \$ 70/Sample Enumeration & Identification to genus or species
  - ADD \$ 45/Sample To Include Full Fungal Speciation (Including ID Of Cladosporium and Penicillium to Species; 2% MEA Only)
- Air Sample Analysis (Culturable Bacteria; One Medium): Sample Turn-Around Time 7-10 Days
  - \$ 70/Sample Enumeration & Identification to genus or species
- Bulk/Swab Sample Analysis (Culturable Fungi; One Medium): Sample Turn-Around Time 7-10 Days
  - \$ 90/Sample Enumeration & Identification to genus or species
  - ADD \$ 45/Sample To Include Full Fungal Speciation (Including ID Of Cladosporium and Penicillium to Species; 2% MEA Only)
- Bulk/Swab Sample Analysis (Culturable Bacteria; One Medium): Sample Turn-Around Time 7-10 Days
  - \$ 90/Sample Enumeration & Identification to genus or species
- Other Microbiological Services and PCR Technology Available: CALL FOR PRICING
- Additional Industrial Hygiene Services Available: CALL FOR PRICING AND CAPABILITIES

#### **Item 3: Equipment Charges**

- Anderson Air Sampler: \$125/Day (Single Stage N-6 Impactor)
- Boroscope: \$ 50/Day
- 4-Gas Monitor w PID: \$200/Day
- Infrared Camera: \$225/Day
- Delmhorst BD-2100: \$100/Day (Moisture Survey Meter)
- ASHRAE IAQ Meter: \$200/Day
- PM-10 Impactor/Sampler: \$125/Day
- Additional Equipment: Call For Pricing

#### **NOTE A:**

1. OT Rate Applies to hours: < 4 hrs/day; > 8 hrs/day; > 40 hrs/wk; Weekends & Holidays
2. Laboratory Turn-Around Begins When Samples Are Received In The Laboratory And Does Not Include Saturday, Sunday & Holidays.
3. Reimbursable Travel Will Be Billed At \$0.550/Mile + Tolls

#### **IV. MISCELLANEOUS SERVICES**

##### **Item 4: Miscellaneous Services**

- Asbestos/Lead/Environmental “Letter Report” w/o Drawings - \$150/each.
- Asbestos/Lead/Environmental “Letter Report” w/KeyCAD Drawings - \$200/each.
- Asbestos/Lead/Environmental “Final Report” w/o Drawings - \$250/each.
- Asbestos/Lead/Environmental “Final Report” w/KeyCAD Drawings - \$300/each.
- Abatement Specifications / AutoCAD / Bidding Process – Priced Based on Scope of Work.
- Preparation/Submittal “Site Specific” Variance - Price Based on Scope of Work
- Conduct Onsite Bid Walkthrough w/Prospective Contractors – Priced Based on Scope of Work.
- Travel & Misc. Materials – Actual Mileage @ \$0.550/mile plus Actual Tolls & Parking.
- Laboratory analysis turnaround times begin when samples are received at Laboratory and does not include weekends or holidays.

RESOLUTION NO.: 241 - 2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL EXECUTE AN AGREEMENT WITH  
KENNETH B. SALZMANN, LS FOR SURVEYING SERVICES  
AT THE CITY'S RESERVOIRS IN THE AMOUNT OF \$1,300.00**

**WHEREAS**, the City of Newburgh intends to install remote reservoir level monitoring sensors at the City's reservoirs known as Washington Lake and Brown's Pond; and

**WHEREAS**, the installation of said sensors require that the City obtain new survey data for certain areas in and around the reservoirs; and

**WHEREAS**, the City has obtain a proposal from Kenneth B. Salzmann, LS, to perform the survey services at a cost of \$1,300.00 with the funding for such services to be derived from F.8320.0208; and

**WHEREAS**, said work is appropriate and necessary to maintain and protect the water supply 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 hereby is authorized to accept a proposal and execute an agreement with Kenneth L. Salzmann, LS, for land surveying services at the City's reservoirs at a cost of \$1,300.00.

# KENNETH B. SALZMANN, LAND SURVEYOR

12 Hunter Lane • P.O. Box 498 • Pawling, NY 12564-0498

Licensed in New York • New Jersey • Connecticut

(845) 855-3885 • fax (845) 855-4101

September 16, 2015

Mr. Jason C. Morris, PE  
City of Newburgh Engineer  
83 Broadway  
Newburgh, NY 12550

**RE:** Elevation Survey  
Lake Washington  
Browns Pond  
City of Newburgh, New York

## **Proposal for Surveying Services**

Dear Jason:

I am pleased to submit this Proposal for Surveying Services for the above referenced sites. I understand you intend to install reservoir level sensors and require elevations on various features and structures at each water body. Accordingly, I propose to perform the following:

### **I. SCOPE OF SERVICES:**

#### **A. Elevation Survey**

You have indicated that you are seeking an elevation on the spillway, top of dam, gatehouse floor and a few other relevant points at each water body. I will meet you at the site to review the exact locations desired. A chiseled cross, survey nail, or other durable marker will be established at each site for future elevation reference. Elevations will be referenced to the apparent datum of record plans you will provide, based upon spot elevation(s) depicted on said plans.

Spillway elevations will be limited to the accessible portion near the gate house; I do not propose to profile the entire spillway or dam. The elevations will not be referenced to the North American Vertical Datum, 1988 (NAVD88), nor will the elevations between the two water bodies be tied together. However, I would be pleased to provide you with a proposal for these additional services if desired.

I will provide a written report in letter format summarizing and describing the various elevations.

### **II. ACCESS:**

I will require access to the site during daylight hours, including the key(s) to all locked gates or doors, if any.

**III. SCHEDULING:**

In light of my current commitments and your scheduled vacation, I will begin this work when it is convenient to meet with you on or after September 28. I expect to deliver the report within 1 week of completing the fieldwork.

**IV. FEES:**

The services described above will be performed for a fixed fee of **\$1,300**.

**V. AUTHORIZATION AND PAYMENT:**

Your authorization for me to proceed simply requires the return of one (1) copy of this Proposal signed, dated and duly authorized. Payment is due upon my submission of the elevation report.

If we are instructed in writing to stop work for any reason, payment for services rendered before the receipt of said notice to stop work is still due.

Please feel free to call me at (845) 855-3885 if you have any questions.

Thank you for the opportunity to submit this Proposal for Surveying Services. I look forward to receiving your authorization to proceed.

Sincerely,



Kenneth B. Salzmann, LS

ACCEPTED: \_\_\_\_\_  
signature

BY: \_\_\_\_\_  
please print

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

RESOLUTION NO.: <sup>242</sup>\_\_\_\_\_ - 2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION DEDICATING A PORTION OF CHAMBERS STREET  
FROM FARRINGTON STREET TO SOUTH STREET  
AS JULIUS H. ROBINSON, SR. AVENUE  
IN HONOR OF THE CITY OF NEWBURGH'S FIRST AFRICAN-AMERICAN PLUMBER**

**WHEREAS**, Julius H. Robinson, Sr. served with pride for 25 years with Local Union 269-Plumbers and Steamfitters; and

**WHEREAS**, Mr. Robinson, upon his retirement from the union, achieved the rank of master plumber in the City of Newburgh and started his own business, Julius Robinson Plumbing and Heating, in the early 1990s at 171 Chambers Street, becoming thereby the first African-American in our city to establish a plumbing enterprise here; and

**WHEREAS**, Mr. Robinson, over a lengthy and distinguished career, earned a reputation as a highly competent, compassionate, honest and indeed beloved plumber whose services were desired by residents of all races, ethnicities and religions; and

**WHEREAS**, Mr. Robinson was known for being available well beyond the hours of other workers in his profession; and

**WHEREAS**, Mr. Robinson also served as president of the City of Newburgh Examining Board of Plumbers; and

**WHEREAS**, Mr. Robinson inspired his son, Julius H. Robinson, Jr., to follow in his footsteps, that son learning the trade at the side of this great craftsman; and

**WHEREAS**, Julius H. Robinson Sr., passed away on Sept. 26, 2014, eliciting great sorrow as well as fond memories, among the residents of this City; and

**WHEREAS**, his son Julius H. Robinson, Jr., now carries on the work of his father in the same tradition of excellence;

**NOW, THEREFORE, BE IT RESOLVED**, that the portion of Chambers Street from Farrington Street to South Street in the City of Newburgh be renamed Julius H. Robinson Avenue, and that an unveiling of signage indicating this change be held, with appropriate ceremony, at a date to be designated by Mr. Robinson's family; and that a copy of this resolution be forwarded to Mr. Robinson's widow and other family members, with greatest respect, from the entire Newburgh City Council; and

**BE IT FURTHER RESOLVED**, that the City Manager be and he is hereby authorized to effectuate the necessary and appropriate signage in keeping herewith.

RESOLUTION NO.: 243 - 2015

OF

SEPTEMBER 28, 2015

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

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

**WHEREAS**, allowing the YEC to use the first floor of the building located at 104 South Lander street will require a license agreement, a copy of which is annexed hereto and made a part of this resolution; and

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

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

## LICENSE AGREEMENT

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_ 2015, between the CITY OF NEWBURGH, a municipal corporation having its principal offices at City Hall, 83 Broadway, Newburgh, NY 12550 (hereinafter referred to as "LICENSOR" or "CITY) and YOUTH EMPOWERMENT CENTER, a domestic corporation organized and existing under the Not-For-Profit Corporation Law of the State of New York, having an address of P.O. Box 1755, Newburgh, New York 12550 (herein referred to as "LICENSEE" or "YEC").

### **WITNESSETH:**

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

**WHEREAS**, LICENSEE desires the license or privilege of gaining access to the Premises for the purpose of providing youth programs and services; and

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

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

#### **1. PREMISES:**

LICENSOR does hereby grant unto LICENSEE use and occupancy of the Premises for the purpose of providing youth programs and services according to the terms and conditions as hereinafter provided.

#### **2. TERM:**

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

#### **3. CONSIDERATION:**

The consideration shall be ONE AND NO/100 (\$1.00) DOLLAR payable by LICENSEE to LICENSOR upon execution of this License Agreement, and all such other covenants, promises and understandings provided herein.

#### **4. USE AND OCCUPANCY:**

- A. LICENSEE shall use and occupy the Premises in a careful, safe and proper manner, and shall not occupy or use said premises or permit the same to be occupied or used for any purpose or business which is unlawful and shall comply with all lawful requirements of all current laws, ordinances, rules and regulations of all governmental authorities pertaining to the use and occupancy of the Premises and according to the following conditions:
- i. All employees, volunteers, interns and other personnel of LICENSEE shall comply with City of Newburgh security policies and procedures and will be issued City of Newburgh identification badges which must be displayed at all times while in and on City property;
  - ii. Licensee's access to the Premises shall be Thursday, Friday and Saturday each week from 1:00 pm until 1:00 am.
  - iii. Licensee may provide youth programs on Thursday, Friday and Saturday each week from 3:00 pm to 12:00 am. However, no program for teenage youth may begin before 5:00 pm on Thursday and Friday.
  - iv. Licensee shall provide its own security.
- B. LICENSOR shall notify LICENSEE when other organizations are scheduled for the approved use of the PREMISES.

#### **5. REPRESENTATIONS OF LICENSEE:**

LICENSEE represents and warrants:

- A. That it is duly organized and existing under the laws of New York State;
- B. That it is financially solvent;
- C. That it is experienced and competent to perform the type of work and to provide the programs and services to be furnished by it;
- D. That it is familiar and in compliance with all federal, state, municipal and department laws, ordinances and regulations that apply to the work or programs or services or to those employed or engaged therein, including but not limited to volunteers and interns;
- E. That all of its employees, volunteers and interns have been screened and subject to the same pre-employment practices to which the City subjects its own employees, volunteers and interns; and
- F. That it has procured and paid for all permits and licenses necessary for the work, programs and services to be rendered hereunder.

#### **6. INSURANCE:**

- A. LICENSEE shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation insurance, liability insurance covering personal injury and property damage, and other insurance with stated minimum coverages, all as

listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the programs provided or services to be performed. Except for Workers' Compensation and professional liability, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of LICENSEE and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, LICENSEE irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article. The provisions of insurance by LICENSEE shall not in any way limit LICENSEE'S liability under this Agreement.

B. LICENSEE shall not occupy the Premises or commence work or programs or provide services under this Agreement until it has obtained the following insurance required under this article and such insurance has been approved by the City:

1. Worker's Compensation - Statutory
2. General Liability and Property Damage Insurance - LICENSEE shall take out and maintain during the life of this agreement such general liability and property damage insurance as shall protect it from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows:
  - a. General Liability Insurance in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$3,000,000.00 on account of any one occurrence.
  - b. Property Damage Insurance in an amount not less than \$500,000.00 for damage on account of all occurrences.

The Licensee shall furnish the above insurance to the City and shall also name the City as an additional named insured in said policies. Such insurance shall be maintained in force during the entire term of this contract.

C. Any accident shall be reported to the Office of the City Manager as soon as possible and not later than twenty-four hours from the time of such accident. A detailed written report must be submitted to the City as soon thereafter as possible and not later than three (3) days after the date of such accident.

## **7. INDEMNITY AND SAVE HARMLESS AGREEMENT:**

- A. It is hereby mutually covenanted and agreed that the relation of the LICENSEE to the work to be performed by it under this Agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances, whether or not the LICENSEE, its agents or employees have been negligent. The LICENSEE shall hold and keep the CITY free and discharged of and

from any and all responsibility and liability of any sort or kind. The LICENSEE shall assume all responsibility for risks or casualties of every description, for loss, death or injury to persons or property arising out of the nature of the performance, other than those wholly caused by Acts of God or conditions pre-existing this license. The LICENSEE shall make good any damages that may occur in consequence of the performances or any part of it. The LICENSEE shall assume all blame, loss and responsibility of any nature by reason of the LICENSEE'S neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance.

- B. The LICENSEE agrees to indemnify and save the City, its officers, agents and employees harmless from any liability imposed upon the City, its officers, agents and/or employees arising from the negligence, active or passive, of the Licensee.
- C. It is understood and agreed between the parties that the LICENSEE shall have no right to control the actions of City employees nor any duty to supervise the actions of CITY employees.

#### **8. IMPROVEMENT AND MAINTENANCE:**

- A. LICENSOR shall maintain the Premises in good repair and conditions, supply utilities including heat, air conditioning, light, ventilation, sanitation, trash removal during the term of this Agreement.
- B. LICENSEE shall not install any equipment or replace any locks and shall not make any alterations to the Premises without the express written permission of the City Manager of the City of Newburgh.
- C. LICENSOR shall provide LICENSEE with two (2) keys to the front door of the PREMISES and a code to the security alarm; and shall permit LICENSEE to store items and supplies in the rear closet.
- D. LICENSEE shall maintain the Premises in a clean and orderly condition; shall provide their own clean up service; surrender the Premises in the same state and condition as it was at the commencement of LICENSEE'S use and occupancy.

#### **9. LICENSOR'S RIGHT TO TERMINATE AGREEMENT:**

LICENSOR shall have the right to terminate this Agreement under the following conditions:

- a. LICENSEE fails or refused to perform any of its obligations under this Agreement; or
- b. LICENSEE fails to comply with all applicable laws, regulations or ordinances; or
- c. LICENSEE commits a substantial violation of any provision of this Agreement.

LICENSOR, at its sole discretion, and, with or without cause, may without prejudice to any other remedy it may have by seven (7) days written notice to the LICENSEE terminate the Agreement.

**10. ADDRESSEES FOR PURPOSES OF NOTICE:**

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

If to City:	City of Newburgh 83 Broadway Newburgh, NY 12550 Attn: City Manager
With copies to:	City of Newburgh 83 Broadway Newburgh, NY 12550 Attn: Corporation Counsel
If to YEC:	Youth Empowerment Center P.O. Box 1755 Newburgh, NY 12550 Attn: Deronica Austin

With copies to:

Attn:

**11. 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.

**12. NON-ASSIGNMENT:**

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

**13. INVALIDITY OF PROVISIONS:**

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

**14. HEADINGS:**

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

**15. ENTIRE AGREEMENT:**

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

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

\_\_\_\_\_  
(date)

CITY OF NEWBURGH, LICENSOR

By: \_\_\_\_\_  
Michael G. Ciaravino  
City Manager  
Per Resolution No.

\_\_\_\_\_  
(date)

LICENSEE

By: \_\_\_\_\_

RESOLUTION NO: 244-2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT  
A PROPOSAL FROM O'CONNOR DAVIES FOR AN AUDIT OF THE NEW YORK  
STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION CLEAN  
WATER/CLEAN AIR BOND ACT PROGRAM GRANT CONTRACT NO. C569943  
IN CONNECTION WITH THE NEWBURGH LANDING AND WATERFRONT PARK  
IMPROVEMENTS PROJECT AMENDING RESOLUTION NO: 296 - 2014,  
THE 2015 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK  
TO TRANSFER \$3,000.00 FROM GENERAL FUND CONTINGENCY  
TO CITY COMPTROLLER - CONSULTANTS SERVICES**

**WHEREAS**, by Resolution No. 156-99 of August 16, 1999, the City Council of the City of Newburgh authorized the application for funding the New York State Office of Parks, Recreation and Historic Preservation under Title 9 of the New York State Environmental Protection Act of 1993 or Title 3 of the Clean Water/Clean Air Bond Act, and upon the approval of such application, the execution of a project agreement with New York State for the Newburgh Landing and Waterfront Parks Improvement Project; and

**WHEREAS**, the City was awarded funding and signed an agreement, which is designated Contract No. C569943; and

**WHEREAS**, the City now seeks to close out the grant contract and the OPRHP requires an audit of the revenues and expenditures incurred under the grant contract; and

**WHEREAS**, the City has obtained a proposal from O'Connor Davies at a cost of \$3,000.00 to perform such auditing services with such funding to be derived from A1315.0445; and

**WHEREAS**, this Council finds that accepting the proposal for the purpose of closing out the grant contract is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal for auditing services from O'Connor Davies at a cost of \$3,000.00 in connection with the close-out of the New York State Office of Parks, Recreation and Historic Preservation Clean Water/Clean Air Bond Act program grant contract no. C569943; and

**BE IT FURTHER RESOLVED**, by the Council of the City of Newburgh, New York that Resolution No: 296-2014, the 2015 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1900.1990 Contingency	\$3,000.00	
A.1315.0455 City Comptroller Consultants Services		<u>\$3,000.00</u>
<b>TOTALS:</b>	\$3,000.00	\$3,000.00

September 9, 2015

Members of the City Council  
City of Newburgh  
City Hall  
83 Broadway  
Newburgh, New York 12550

Dear Members of the City Council:

We are pleased to confirm our understanding of the nature and limitations of the services we are to provide for the City of Newburgh, New York ("City").

We will apply the agreed-upon procedures which the City has specified, listed in the attached schedule, which were agreed to by the NYS Office of Parks, Recreation, and Historic Preservation solely to assist in evaluating the City's assertion that the revenues and expenditures submitted under Contract #C569943 are allowable based on the contract provisions, guidelines, rules and regulations, and the policies prescribed by the New York State Office of Parks, Recreation, and Historic Preservation. Our engagement to apply agreed-upon procedures will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described in the attached schedule either for the purpose for which this report has been requested or for any other purpose. If, for any reason, we are unable to complete the procedures, we will describe any restrictions on the performance of the procedures in our report, or will not issue a report as a result of this engagement.

Because the agreed-upon procedures listed in the attached schedule do not constitute an examination, we will not express an opinion on the assertions that the revenues and expenditures submitted under Contract #C569943 are allowable based on the contract provisions, guidelines, rules and regulations, and the policies prescribed by the New York State Office of Parks, Recreation, and Historic Preservation. In addition, we have no obligation to perform any procedures beyond those listed in the attached schedule.

We will submit a report listing the procedures performed and our findings. This report is intended solely for the use of the City and the State of New York Office of Parks, Recreation, and Historic Preservation, and should not be used by anyone other than these specified parties. Our report will contain a paragraph indicating that had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

You are responsible for the presentation of the assertions that the revenues and expenditures submitted under Contract #C569943 are allowable based on the contract provisions, guidelines, rules and regulations, and the policies prescribed by the New York State Office of Parks, Recreation, and Historic Preservation.; and for selecting the criteria and determining that such criteria are appropriate

O'CONNOR DAVIES, LLP  
500 Mamaroneck Avenue, Suite 301, Harrison, NY 10528 | Tel: 914.381.8900 | Fax: 914.381.8910 | [www.odpkf.com](http://www.odpkf.com)

for your purposes. You are responsible for assuming all management responsibilities; for designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience. In addition, you are responsible for evaluating the adequacy and results of the services performed and accepting responsibility for the results of such services.

Domenick Consolo is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

We plan to begin our procedures shortly after the acceptance of this engagement letter and, unless unforeseeable problems are encountered, the engagement should be completed within 30 days. At the conclusion of our engagement, we will require a representation letter from management that, among other things, will confirm management's responsibility for the presentation of the assertions that the revenues and expenditures submitted under Contract #C569943 are allowable based on the contract provisions, guidelines, rules and regulations, and the policies prescribed by the New York State Office of Parks, Recreation, and Historic Preservation.

We estimate that our fees for these services will be \$3,000. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the engagement. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs. Our invoices for these fees will be rendered and are payable on presentation.

We appreciate the opportunity to assist you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us. If the need for additional procedures arises, our agreement with you will need to be revised. It is customary for us to enumerate these revisions in an addendum to this letter. If additional specified parties of the report are added, we will require that they acknowledge in writing their responsibility for the sufficiency of procedures.

Very truly yours,

*O'Connor Davies, LLP*  
O'Connor Davies, LLP

**CITY OF NEWBURGH, NEW YORK**

**RESPONSE:**

This letter correctly sets forth the understanding of the City of Newburgh, New York.

By: \_\_\_\_\_ By: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

### **Agreed-Upon Procedures Schedule**

1. Verify that all payments claimed by the grantee in the final report were made by examining cancelled checks, payee endorsements, and/or other evidentiary material.
2. In cases with "force account expenditures" (salaries of the grantee's staff), verify Time & Attendance/Payroll documentation exists supporting the charge for personnel used on grant project.
3. In cases where "donations" of labor, materials, equipment, supplies, and real property were claimed, verify that the donations were applicable to grant activities, that values assigned to donations are legitimate and all donations are matched by documented eligible expenditures for grant activities.
4. Verify that the "Schedule of Project Expenditures by Vendors" supports the documented eligible project costs.
5. Verify that the "Schedule of Revenues by Source" clearly identifies the source of all eligible matching funds.
6. Verify that all services provided and costs incurred were within the contract term or within the permitted retroactive window when those expenses are approved as itemized in the project budget.

RESOLUTION NO.: 245-2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY  
FROM A DEED ISSUED TO THE CHURCH OF ST. MARY  
TO THE PREMISES KNOWN AS 184 N. MILLER STREET  
(SECTION 11, BLOCK 2, LOT 23)**

**WHEREAS**, on May 3, 2001, the City of Newburgh conveyed property located at 184 N. Miller Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 11, Block 2, Lot 23, to the Church of St. Mary; and

**WHEREAS**, the Church of St. Mary, by its attorney, has requested a release of the restrictive covenants contained in said deed; and

**WHEREAS**, the appropriate departments have reviewed their files and recommend such release be granted; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the 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.

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

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 184 N. Miller Street, Section 11, Block 2, Lot 23, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4 and 5 in a deed dated May 3, 2001, from the CITY OF NEWBURGH to THE CHURCH OF ST.MARY, recorded in the Orange County Clerk's Office on May 10, 2001, in Liber 5519 of Deeds at Page 268 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: \_\_\_\_\_, 2015

THE CITY OF NEWBURGH

By: \_\_\_\_\_  
Michael G. Ciaravino, City Manager  
Per Resolution No.: \_\_\_\_\_-2015

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared MICHAEL G. CIARAVINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

\_\_\_\_\_

RESOLUTION NO.: 246 - 2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION AMENDING RESOLUTION NO. 103-2015 OF MAY 11, 2015  
AUTHORIZING AN AMENDMENT TO THE TERMS OF SALE AND AN EXTENSION OF  
TIME TO CLOSE TITLE ON THE CONVEYANCE OF REAL PROPERTY  
KNOWN AS 258 LIBERTY STREET REAR (SECTION 18, BLOCK 6, LOT 29)  
AT PRIVATE SALE TO DAN GILBERT FOR THE AMOUNT OF \$500.00**

**WHEREAS**, by Resolution No. 103-2015 of May 11, 2015, the City Council of the City of Newburgh authorized the sale of real property known at 258 Liberty Street Rear, more accurately described as Section 18, Block 6, Lot 29 on the official tax map of the City of Newburgh, to Dan Gilbert upon receipt of the purchase price of \$500.00; and that said purchase price must be paid no later than July 10, 2015, and in accordance with certain terms and conditions of sale; and

**WHEREAS**, the purchaser has requested a modification of the terms of sale and requested additional time to close title and the City Council of the City of Newburgh has determined that it would be in the best interests of the City of Newburgh to modify the terms of sale and to extend the time to close title;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that Resolution No. 103-2015 of May 11, 2015 is hereby amended to extend the time to close title on the sale of 258 Liberty Street Rear to Dan Gilbert until November 30, 2015; and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the purchase price of \$500.00; and that said purchase price must be paid no later than November 30, 2015, and in accordance with the amended terms and conditions of sale as annexed hereto and made part hereof; and

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

# Terms and Conditions Sale

## 258 Liberty Street Rear, City of Newburgh (18-6-29)

### STANDARD TERMS:

1. City of Newburgh acquired title to this property in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. For purposes of these Terms and Conditions, parcel shall be defined as a section, block and lot number.
3. All real property, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title; and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the date of sale.
4. The property is sold subject to unpaid school taxes for the tax years of 2014 and 2015 County Tax and 2014-2015 School Taxes and any subsequent levies. The purchaser shall reimburse the City for 2014 and 2015 County Taxes and 2014-2015 School Taxes and any subsequent levies. Upon the closing, the property shall become subject to taxation and apportionment of the 2015 City taxes shall be made as of the date of closing. Water and sewer charges and sanitation fees will be paid by the City to the date of closing.
5. **WARNING: FAILURE TO COMPLY WITH THE TERMS OF THIS PARAGRAPH MAY RESULT IN YOUR LOSS OF THE PROPERTY AFTER PURCHASE.** The deed will contain provisions stating that the purchaser is required to partially demolish and rebuild a storage area on the property in compliance with all State, County and Local standards within twelve (12) months of the date of the deed. Within such twelve (12) month time period the purchaser must obtain all permits necessary to complete said demolition and reconstruction. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the twelve (12) month period. If the purchaser has not complied with the deed provisions regarding the demolition and reconstruction of said storage area and obtained a Certificate of Compliance/Completion by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Compliance/Completion is issued. A written request made to the City Manager for an extension of the twelve (12) month period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to demolish and rebuild said structure of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. The Purchaser is currently the owner of adjacent parcel identified as 258 Liberty Street, Section 18, Block 6, Lot 28, and will combine both parcels as one lot of record within one (1) year of the date of conveyance.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.

9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receipt of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before November 30, 2015. *The City of Newburgh does not accept credit card payments for the purchase price and closing costs/fees.* **The City is not required to send notice of acceptance or any other notice to a purchaser.** At closing, purchaser, as grantee, may take title as a natural person or as an entity wherein purchaser is an officer or managing member of said entity. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefor, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
11. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the successful bidder shall be entitled only to a refund of the purchase money paid with interest. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale.
12. Sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, his heirs, successors or assigns, against City of Newburgh arising from this sale.
13. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price, buyer's premium, and closing fees/costs. Possession of property is forbidden until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
14. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
15. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
16. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
17. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he/she is not representing the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom City of Newburgh foreclosed within 24 months subsequent to the auction date. If such conveyance occurs, the purchaser understands that he/she may be found to have committed fraud, and/or intent to defraud, and will be liable for any

deficiency between the purchase price at auction and such sums as may be owed to City of Newburgh as related to the foreclosure on the property and consents to immediate judgment by City of Newburgh for said amounts.

RESOLUTION NO.: 247 - 2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION AUTHORIZING THE AWARD OF A BID AND  
THE EXECUTION OF A CONTRACT WITH SUN-UP ENTERPRISES, INC.  
FOR THE DELANO-HITCH RECREATION PARK BASKETBALL COURTS  
IMPROVEMENTS PROJECT AT A BASE BID COST OF \$169,310.00**

**WHEREAS**, the City of Newburgh has duly advertised for bids for the Delano-Hitch Recreation Park Basketball Courts Improvements Project (the "Project"); and

**WHEREAS**, the Project involves repair and resurfacing of the basketball courts located within the Delano-Hitch Recreation Park; and

**WHEREAS**, bids have been duly received and opened and Sun-up Enterprises is the low bidder; and

**WHEREAS**, funding for such project shall be derived from Community Development Block Grant funds; and

**WHEREAS**, this Council has determined that awarding such bid and entering into a contract with Sun-Up Enterprises, Inc. is in the best interests of the City of Newburgh and its further development;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the bid for the Delano-Hitch Recreation Park Basketball Courts Improvements Project at a base bid cost of \$169,310.00, and that the City Manager be and he is hereby authorized to enter into a contract for such work in this amount.

RESOLUTION NO.: 248-2015

OF

SEPTEMBER 28, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT DONATIONS IN SUPPORT OF THE  
RECREATION DEPARTMENTS TRAVELING SPORTS PROGRAM**

**WHEREAS**, the City of Newburgh Recreation Department will be establishing a traveling sports program; and

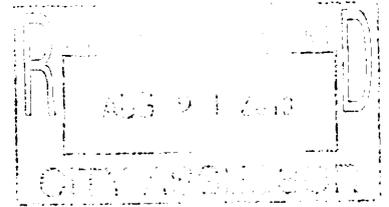
**WHEREAS**, various businesses, firms and individuals have made and are willing to make contributions of money and in-kind assistance to support this program; and

**WHEREAS**, the funds will be used to pay for tournaments for the travel teams which will make sure that everyone has an opportunity to play on these teams and compete against the highest level of competition; and

**WHEREAS**, this Council deems it to be in the best interests of the City of Newburgh and its residents to accept such donations;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept said donations with the appreciation and thanks of the City of Newburgh on behalf of its children, families and citizens, for their support of the Recreation Department's traveling sports program.

August 20, 2015



Elizabeth J. Berardinelli

17 Hillside Court

Newburgh, New York 12550

Phone: 845-561-5372

TO: Members of Newburgh City Council

RE: Re-Appointment to The Board of Assessment Review

Naomi Fay

Executive Assistant

I would like to remain on The Board of Assessment . My term expires on 9/30/15.

I have been on the Board for the past two years. With the experience I have gained during this time has been very interesting. I have lived in Newburgh for the past 50 years or more. Now especially serving on the board for the past two years I feel I am more familiar with the different streets and homes.

I would appreciate your consideration and look forward to hearing from you.

  
Elizabeth J. Berardinelli

## OPTION AND PURCHASE AGREEMENT

THIS OPTION AND PURCHASE AGREEMENT (this "**Agreement**"), effective as of \_\_\_\_\_, 2015 (the "**Effective Date**"), by and between **CITY OF NEWBURGH, NEW YORK**, a municipal corporation of the State of New York having an address at City Hall, 83 Broadway, Newburgh, New York 12550 (together with its successors and assigns, "**Seller**" or "City"), and FD Water Street Holdings LLC, a New York limited liability company with an address c/o Joan P. Kaplan, 5 Dogwood Hills Road, Newburgh, NY 12550 (together with its successors and assigns, "**Buyer**"). Pursuant to this Agreement, Seller hereby grants to Buyer an exclusive option to purchase the Property (as described below) (the "**Option**").

### RECITALS

WHEREAS, Seller owns several parcels of unimproved real property situated at 35-37 Broad Street, 207 Water Street, 207 Water Street rear, 209 Water Street, 215 Water Street, 182 Water Street and 248 Water Street, Newburgh, Orange County, New York (the "**Real Property**"); and

WHEREAS, Seller desires to grant to Buyer, and Buyer desires to obtain from Seller, an exclusive option to purchase the Real Property from Seller on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and intending to be legally bound hereby, the Parties do hereby stipulate, covenant and agree as follows:

**1. Property:** "**Property**" as used in this Agreement shall collectively mean the following:

- (a) The Real Property, being identified as Tax Parcel ID Nos. 10-3-2.22, 12-3-2.1, 12-3-4, 12-3-3, 12-3-1.2, 12-6-4 and 10-4-3 and consisting of approximately 5.75 acres as more fully described in **Exhibit "A"** attached hereto and incorporated herein and all appurtenances and hereditaments thereto ("**Land**");
- (b) All rights, privileges, grants and easements appurtenant to or burdening Seller's interest in the Land, if any, including, all of Seller's right, title and interest, if any, in and to all easements, licenses, covenants and other rights-of-way, variances and all other estates, rights, titles, interests, servitudes, tenements, and appurtenances in connection with, in relation to, or used in connection with the beneficial use and enjoyment of the Land ("**Additional Rights**"); subject to the zoning and other ordinances, codes and regulations of the City and the City Charter; and

**2. Option Period:** Seller hereby grants to Buyer, and Buyer hereby obtains from Seller, an exclusive option to purchase the Property on the terms and conditions set forth in this Agreement commencing on the Effective Date and continuing through midnight of the fourth anniversary of the Effective Date (the "**Option Period**").

**3. Option Price:**

(a) Simultaneously with the execution hereof, Buyer shall pay to Seller an option fee equal to **TWENTY-ONE THOUSAND THREE HUNDRED THIRTY DOLLARS** (\$21,330.00), representing the entire amount to be paid for the Option (the "**Option Price**").

(b) In the event that Buyer fails to timely pay any portion of the Option Price, Seller may provide Buyer with written notice advising Buyer of such failure to pay, and within ten (10) business days of receipt of such notice, Buyer shall have the right to cure such default by paying the amount due plus a five percent (5%) premium on such amount. In the event Buyer fails to make such payment within such ten (10) business day period, Seller may terminate this Agreement by written notice to Buyer and Buyer's Option to purchase the Property shall be extinguished, and Seller shall retain the Option Price that were due and payable prior to that date as liquidated damages (provided that Buyer shall pay to Seller any unpaid Option Price that was due and payable as of the date the Agreement is terminated), except in the event of a breach of this Agreement by Seller.

(c) If Buyer fails to exercise the Option by the end of the Option Period, this Agreement shall terminate and Buyer's Option to purchase the Property shall be extinguished, and Seller shall retain the Option Price as liquidated damages (provided that Buyer shall pay to Seller any unpaid Option Price that was due and payable as of the date the Agreement is terminated), except in the event of a material breach of this Agreement by Seller, in which event the Option Price shall be refunded to Buyer within thirty (30) days of the end of the Option Period.

**4. Exercise:** Buyer may, in its sole and absolute discretion, exercise the Option by written notice to Seller (the "**Buyer Option Notice**") or terminate the Option by written notice to Seller at any time (the "**Buyer Termination Notice**"). The Option must be exercised no later than the last day of the Option Period in order to be timely. In the event Buyer fails to deliver to Seller the Buyer Option Notice on or before the expiration of the Option Period or sends a Buyer Termination Notice on or before the expiration of the Option Period, this Agreement shall terminate and Seller shall retain the Option Price (provided that Buyer shall pay to Seller any unpaid Option Price that was due and payable as of the date the Agreement is terminated), except in the event of a material breach of this Agreement by Seller.

**5. Purchase Price:** If Buyer elects to exercise this Option pursuant to this Agreement, the total purchase price for the Property shall be (i) **TWO HUNDRED THIRTEEN THOUSAND THREE HUNDRED DOLLARS** (\$213,300.00), less (ii) the Option Price

paid by Buyer to Seller prior to the exercise date (the "**Purchase Price**"). Upon payment of the Purchase Price, all right, title and interest to the Property shall transfer to Buyer.

**6. Rights of Buyer During Option Period:**

- (a) From and after the Effective Date, Seller hereby grants Buyer a license to enter the Land pursuant to which the Buyer and its agents shall have the right to access the Property during normal business hours for the purpose of conducting due diligence at Buyer's sole cost and expense. If Buyer intends to conduct invasive testing on the Property, Buyer's right of access to conduct that invasive testing shall require at least twenty-four (24) hour advance notice to Seller. This right of entry shall be conditioned upon Seller, or a representative or agent designated by Seller, having the right to be present on the Property with Buyer or its representatives at the time or times that Buyer is on or about the Property for the purpose of conducting invasive testing, at no cost to Buyer.
- (i) In conducting any inspection of the Property or otherwise accessing the Property, Buyer shall at all times comply with all laws and regulations of all applicable governmental authorities. Buyer shall have no right to materially alter the Property without the express written approval of the Seller, or to damage the Property in any respect in connection with its inspections, except in accordance with the terms and conditions of this Agreement. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by Buyer or Buyer's Representatives relating to such inspection and/or its other access shall be at the sole cost and expense of Buyer. In the event that the Closing hereunder shall not occur for any reason whatsoever Buyer shall restore the Property to its original condition or as close thereto as is reasonably feasible, at its sole expense.
- (ii) Buyer hereby agrees to indemnify and hold Seller absolutely harmless from and against any and all claims, demands, actions, suits, judgments, liabilities, costs and expenses, including reasonable attorneys' fees (such fees also to include those in connection with all post-judgment and appellate proceedings), for injury to persons and physical damage to property related to or arising from Buyer's entry upon any portion of the Property owned by Seller and the performance (by Buyer or Buyer's Representatives) of the tests and/or inspections. Seller hereby agrees to indemnify and hold Buyer absolutely harmless from and against any and all claims, demands, actions, suits, judgments, liabilities, costs and expenses, including reasonable attorneys' fees (such fees also to include those in connection with all post-judgment and appellate proceedings), for injury to persons and physical damage to property related to or arising from the Property other than caused by Buyer's entry upon any portion of the Property owned by Seller and the performance (by Buyer or Buyer's Representatives) of the tests and/or inspections. The terms of this Subparagraph 6(a) shall survive the termination of this Agreement or the delivery and recording of the deed(s).

- (iii) Buyer shall, at its sole expense, obtain and maintain prior to entering the Property, and as to (i) and (ii) above, shall cause Buyer's Representatives to obtain and maintain prior to entering the Property, from a financially sound insurance company or companies having an AM Best rating of not less than "A", policies of insurance for the following types of coverage and with limits of liability not less than the minimum amounts set forth below:
- (A) Workers' compensation and disability insurance with statutory limits and employers' liability insurance with limits of not less than \$500,000,
  - (B) Automobile liability insurance including bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate, and
  - (C) Commercial general liability insurance with limits of not less than \$2,000,000 combined single limit, which may be arranged through a combination of primary and excess policies (umbrella) if necessary, for claims of bodily injury and/or property damage, written on an "occurrence" basis and including coverage for personal injury liability, products and completed operations, independent contractors, blanket broad form contractual liability, and explosion, collapse, and underground hazards.
- (iv) Prior to entering the Property, Buyer and Buyer's Representatives, whichever of them is then entering the Property, shall provide Seller with a certificate(s) of insurance evidencing that the foregoing policies of insurance have been obtained and are in full force and effect and that Seller has been named an additional insured under said policies. Said certificate(s) shall also show the expiration date of each policy and provide that Seller shall be given at least ten (10) days' prior written notice of any cancellation or material modification thereof. Neither the purchase of any policy of insurance nor the furnishing of evidence thereof to Seller pursuant hereto shall relieve Buyer of its indemnification obligations hereunder.
- (b) If Buyer is at any time not satisfied with any diligence findings or fitness for purpose of the Property in its sole discretion, Buyer may terminate this Agreement by sending Seller Buyer's Termination Notice, whereupon this Agreement shall terminate and Seller and Buyer shall be relieved of all further obligations hereunder except for any indemnification obligations that are expressly provided to survive the termination of this Agreement, provided that Buyer shall pay to Seller any unpaid Option Price that was due and payable following the expiration of the Diligence Period as of the date of the termination of this Agreement, except in the event of a material breach of this Agreement by Seller. Subject to the limitations set forth herein, Buyer may conduct any due diligence it may desire, including, without limitation:

- Physical Inspection. Buyer may obtain physical inspections of the Property;
- Title. Buyer may obtain a title commitment ("**Title Commitment**") from a nationally recognized title company of its choosing (the "**Title Company**").
- Survey. A survey of the Property may be ordered by the Buyer. Any survey shall be certified to Seller, Buyer, and Title Company. If so certified to Seller, the description from the survey shall be used in the Deed.
- Environmental Site Assessment. An Environmental Site Assessment of the Property may be obtained by the Buyer.
- Soil and Drainage Inspection. Subject to the provisions of the final paragraph of this Section 6(b), Buyer may obtain soil and drainage inspections and tests concerning the Property.

During the Diligence Period and subject to the final paragraph of this Section 6(b), Buyer may conduct all other soil inspections, surveying, and review of governmental approvals and permits related to the Property, zoning, title, survey, leases, financial information, service agreements, management contracts, and other agreements related to the Property, together with all other tests, inspections and investigations that Buyer deems necessary, in Buyer's sole and absolute discretion. Seller shall provide such cooperation and access as shall be reasonably necessary for Buyer to promptly perform such due diligence. All tests, inspections and investigations completed by Buyer or Buyer's agents or contractors shall be at Buyer's sole cost and expense and shall be completed in a manner so as to not unreasonably interfere with Seller's ownership of the Property. If this transaction does not close, Buyer agrees to promptly repair any damage to the Property caused by Buyer's entry onto the Property to complete these tests and investigations, at its sole cost. In any case, Buyer, in addition to that set forth above, shall indemnify and hold Seller harmless for any direct, out-of-pocket loss, expense, damage, claim, liability or cost (including, without limitation, litigation costs) arising out of the performance of the tests or inspections conducted by Buyer or its agents pursuant to this paragraph, to the extent any such liability is not the result of an act or omission of Seller.

Notwithstanding anything herein to the contrary, Buyer shall not conduct or authorize any invasive or intrusive physical or environmental testing (including, without limitation, any subsurface or groundwater testing or sampling) without the approval of Seller's Engineer and Seller's prior written consent of the scope and specifications of such proposed testing, which consent shall not be unreasonably withheld or delayed by Seller. Except for disclosures required by applicable law or by regulatory authorities, Buyer will not reveal to any third party not approved by Seller (other than Buyer's agents, consultants, investors, permitted assignee, attorneys and other representatives assisting Buyer in connection with the transaction contemplated hereby, and only then, subject to the confidentiality requirement set forth herein, and as may be required by law) the results of its inspections.

In the event of the expiration or termination of this Agreement for any reason whatsoever other than a breach or default by Seller under this Agreement, Buyer shall, promptly after such expiration or termination after written request therefor by Seller, (1) return to Seller any and all due diligence materials and other information or documentation provided by Seller to Buyer and (2) deliver to Seller the results of any soil tests or environmental reports commissioned by Buyer to the extent Seller is permitted to do so pursuant to any engagements letters governing such tests or reports. Buyer shall not be obligated to deliver to Seller any other due diligence materials and other information or documentation obtained by, or made available to Buyer, on its own or from or at the behest of Seller in connection with its investigation of the Property (including all copies and abstracts thereof and including all environmental reports prepared by or on behalf of Buyer) to the extent such materials, information or documentation is owned and controlled by Buyer, unless Seller reimburses Buyer for the cost of obtaining such due diligence reports.

**7. Conveyance of Title:** If the Option is exercised by Buyer, Seller shall convey title to the Property to Buyer by Quitclaim Deed free and clear of all exceptions, liens and encumbrances, other than current taxes not yet due and payable; any state of facts which an accurate survey would show; any laws, regulations or ordinances (including, but not limited to zoning, building and environmental protection) as to use, occupancy, subdivision or improvement of the Premises adopted or imposed by any governmental body, or the effect of any noncompliance or violation thereof; and any special assessment affecting the property (collectively, "Permitted Exceptions"), said title to be insurable (subject to the Permitted Exceptions) by a Title Insurance Company licensed to do business within the State of New York at ordinary rates payable by Buyer unless Buyer shall have waived such objections as hereinafter provided. The Deed shall contain a covenant by Seller as required by Section 13 of the Lien Law. The payment of the New York State Transfer Tax, if any, shall be the obligation of the Buyer.

If the Option is exercised, Buyer acknowledges that, except as expressly set forth herein, it will be acquiring the Property in its physical condition "AS IS" condition as of the Effective Date, WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. In addition, except as expressly set forth herein, neither Seller nor any agents, representatives, or employees of Seller have made any representations or warranties, direct or indirect, oral or written, express or implied, to Buyer or any agents, representatives, or employees of Buyer with respect to the condition of the Property, its fitness for any particular purpose, or its compliance with any laws. Buyer further acknowledges that it will have had the opportunity to fully inspect the Property and review all factors relevant to its anticipated use.

**8. Closing:**

- (a) If the Buyer exercises the Option, the closing (the "**Closing**") for the delivery of the Deed and other instruments contemplated by this Agreement and payment of the

Purchase Price shall be on a date within twenty (20) days after delivery of the Buyer Option Notice (the "**Closing Date**") or on such later date as the Parties mutually agree, provided, however, if that date falls on a Saturday, Sunday or a legal holiday, then the Closing Date shall be on the next business day. The Closing shall be held at the offices of the Corporation Counsel of Seller in the City of Newburgh, New York, or at such other place as the parties hereto shall mutually agree.

- (b) In the event that Seller defaults in or otherwise avoids performance under this Agreement, Buyer may terminate this Agreement by notice to Seller, and thereupon all obligations of the parties under this Agreement shall terminate other than any party's indemnification covenants and agreements contained herein which by the specific terms of this Agreement are stated to survive any expiration or termination of this Agreement and provided that Seller shall refund to Buyer the Option Price previously paid to Seller, together with the reasonable out of pocket costs incurred by Buyer for title examination, survey work and due diligence costs incurred by Buyer, in an aggregate amount not to exceed \$200,000.
- (c) If for any reason whatsoever the Seller shall be unable to convey title to the Property in accordance with the terms of this Contract then the sole obligation and liability of the Seller to Buyer shall be to refund to Buyer the Option Price and the costs incurred by Buyer for title examination, survey work and due diligence (in an aggregate amount not to exceed \$200,000, excluding the payment in respect of the Option Price), and upon the making of such payments, this Contract shall be deemed cancelled and shall wholly cease and terminate and neither party shall have any further claim against the other by reason of this Contract.
- (c) In the event that Buyer exercises the Option but Buyer defaults in its obligation to close, Seller may terminate this Agreement and, in addition to Seller retaining the Option Price previously paid to Seller, Seller shall be entitled to seek payment of the balance due on the Purchase Price, but not specific performance for the conveyance of the Property on the terms and conditions set forth in this Agreement.
- (d) At the Closing, Seller shall deliver or cause to be delivered, at Seller's sole expense, each of the following items, each executed and acknowledged to the extent appropriate:
  - (i) The Deed, along with required recording forms TP-584 and RP-5217;
  - (ii) A closing statement specifying the Purchase Price, prorations, credits, adjustments and costs in connection with the transaction; and
  - (iii) Physical possession of the Land.
- (e) At Closing, Buyer shall deliver to Seller the following items:

- (i) Immediately available funds by bank check or certified check in an amount equal to the Purchase Price;
  - (ii) A closing statement specifying the Purchase Price, prorations, adjustments and costs in connection with the transaction;
  - (iii) Such documents as may be required by the Buyer's title company; and
  - (iv) Any and all other items contemplated by the terms of this Agreement.
- (f) The following shall be prorated between Seller and Buyer as of 12:01 a.m. on the date on which the Closing occurs: (i) real estate taxes and assessments, if any and (ii) utilities.
- (g) Buyer shall be responsible for the payment of New York State Transfer Tax, if any and all other closing costs and fees, other than any of Seller's expenses in connection with this transaction.

**9. Broker:** Each Party represents and warrants that no broker or agent has been engaged with respect to this transaction. Seller agrees to indemnify Buyer and hold Buyer harmless against any liability, loss, cost, damage, claim and expense (including, but not limited to, reasonable attorneys' fees and costs of litigation) which Buyer shall ever incur because of any claim of any broker or agent claiming through Seller, whether or not meritorious, for any such fee or commission. Buyer agrees to indemnify Seller and hold Seller harmless against any liability, loss, cost, damage, claim and expense (including, but not limited to, reasonable attorneys' fees and costs of litigation) which Seller shall ever incur because of any claim of any broker or agent claiming through Buyer, whether or not meritorious, for any such fee or commission. The provisions of this paragraph shall survive the closing.

**10. Seller and Buyer Obligations and Representations:**

- (a) Until this Agreement is terminated or expires, Seller agrees to the following:
- (i) Seller will not directly or indirectly offer or advertise the Property for sale or lease, nor show it to any prospective buyer or tenant;
  - (ii) Seller will not, without Buyer's prior written consent, enter into any contract or lease or assume any obligation that will adversely affect Seller's ownership or occupation of the Property or create any lien, easement or encumbrance on the Property;
  - (iii) Seller will timely pay in full all obligations relating to Seller's ownership of the Property;

- (iv) Seller will comply with all applicable laws that affect the Property;
  - (v) Seller will cooperate with all reasonable requests by Buyer with respect to any permits or approvals that Buyer is seeking for the Property including being co-applicant to the extent necessary and not opposing the issuance of such permits and approvals;
  - (vi) Seller will take no willful or intentional actions which directly or indirectly adversely and materially impact the validity or enforceability of this Agreement or the value of the Property; and
  - (vii) Seller will maintain the Property consistent with its current condition and past practices.
- (b) Seller shall promptly notify Buyer if any of the following occurs during the Option Period, or if Buyer exercises the Option, until the Closing:
- (i) any notice or other communication from any governmental or regulatory agency or authority in connection with environmental conditions of the Land and/or the transactions contemplated by this Agreement;
  - (ii) any actions, suits, claims, investigations or proceedings commenced or, to the knowledge of Seller, threatened against, relating to, involving, or otherwise affecting Seller or the Property which relate to the consummation of any of the transactions contemplated by this Agreement; and
  - (iii) any fact, event, transaction or circumstance, as soon as practical after it becomes known to Seller, that (x) Seller reasonably believes would adversely affect or could adversely affect the ability of Seller to maintain in full force and effect title to the Property or convey good and marketable fee simple title to the Property to Buyer, or (y) results, or is reasonably likely to result, in a material adverse effect to the Property or that could prevent, materially delay or adversely affect the consummation of the transactions contemplated by this Agreement.
- (c) If, at any time during the Option Period, Seller commits a material breach of any agreement affecting the Property or violates any applicable laws, rules, regulations, conditions or restrictions, including, without limitation, the failure to pay any taxes or penalties, (each a "**Violation**"), Seller agrees (i) to promptly notify Buyer of such Violation, (ii) that Buyer may, in Buyer's sole discretion, take all such action as Buyer deems necessary to cure such Violation on behalf of Seller, if Seller refuses to do so, and (iii) to promptly reimburse Buyer for all reasonable costs and expenses incurred in the event Buyer elects to take any action permitted by the preceding section (ii) hereof (or in the event of a material breach of this reimbursement obligation, permit

Buyers, at their election, to credit the costs against the Purchase Price). Seller shall further notify Buyer of any government notice or communication related to the Property, any new or threatened legal actions related to the Property or any fact or occurrence which could adversely affect the value of or title to the Property. If, at any time during the Option Period, Buyer commits a material breach of any agreement affecting the Property or violates any applicable laws, rules, regulations, conditions or restrictions, including, without limitation, the failure to conduct its tests or inspections in a manner that complies with all such applicable laws, rules, regulations, conditions or restrictions relating to the Property, (each a "**Violation**"), Buyer agrees (i) to promptly notify Seller of such Violation, (ii) that Seller may, in Seller's sole discretion, take all such action as Seller deems necessary to cure such Violation on behalf of Buyer, if Buyer refuses to do so, and (iii) to promptly reimburse Seller for all reasonable costs and expenses incurred in the event Seller elects to take any action permitted by the preceding section (ii) hereof (or in the event of a material breach of this reimbursement obligation, permit Sellers, at their election, to credit the costs against the Purchase Price). Buyer shall further notify Seller of any government notice or communication related to the Property received by Buyer, any new or threatened legal actions related to the Property or any fact or occurrence that could adversely affect the value of the Property.

- (d) As of the Effective Date and at all times during the Option Period, or if Buyer exercises the Option, until and at the time of the Closing, Seller represents and warrants as follows:
- (i) Seller is the sole owner of the Property.
  - (ii) [Pursuant to Resolution No.: -2015 adopted by the City Council of the Seller on \_\_\_\_\_, 2015, ], Seller has full right, power and authority to enter into this Agreement, and has undertaken all necessary procedures in accordance with applicable law to sell, convey and transfer the Property to Buyer in accordance with the terms and provisions of this Agreement. Each person executing this Agreement on behalf of Seller represents and warrants that such person is duly authorized to act on behalf of Seller in executing this Agreement, and that this Agreement constitutes a valid and legally binding obligation of Seller enforceable against Seller in accordance with its terms.
  - (iii) Seller is not insolvent and has not made, nor anticipates making, a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or, to Seller's knowledge, suffered the filing of an involuntary petition by Seller's creditors, suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, admitted in writing its inability to pay its debts as they generally come due or made an offer of settlement, extension or composition to its creditors generally.

- (iv) There are no pending or, to Seller's knowledge any threatened, actions, lawsuits, delinquent taxes or pending or threatened government actions relating to the Property; provided, however, the foregoing shall not include any such actions, lawsuits, taxes or government actions involving Buyer's proposed commercial project and related improvements.
- (v) To Seller's knowledge, there are no unrecorded rights of first offer to purchase, rights of first refusal to purchase, purchase options or similar rights available to any party other than Buyer or contractually required consents to transfer pertaining to the Property. Seller has not granted to any person, firm or entity, other than Buyer, any right to purchase, lease or otherwise acquire the Property or any part thereof.
- (vi) The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound, and will not result in the imposition of any lien or encumbrance against the Property.
- (vii) There are no service contracts, utility agreements, maintenance agreements and other contracts or agreements currently in effect with respect to the Property (except those that may be terminated upon not more than 30 days' notice without premium or penalty).
- (viii) There are no leases, subleases, concession agreements or other rental, transfer or occupancy arrangements allowing for the occupancy of the Property or permit any party the use thereof.
- (ix) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, and all amendments thereto and all regulations issued thereunder.
- (x) Neither Seller nor, to Seller's actual knowledge, its affiliates, is in violation of the Anti-Money Laundering and Anti-Terrorism Laws. Neither Seller nor, to Seller's actual knowledge, its affiliates, is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time. Neither Seller nor, to Seller's actual knowledge, its affiliates or, without inquiry, any of its brokers or other agents, in any capacity in connection with the sale of the Property (A) conducts any business or engages in making or receiving any

contribution of funds, goods or services to or for the benefit of any person included in the lists referenced above, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws. Neither Seller, nor any person controlling or controlled by Seller, is a country, territory, individual or entity named on a Government List, and the monies used by Seller in connection with this Agreement and amounts committed with respect hereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a list maintained by the federal government or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

- (xi) Seller is not providing any representation or warranty to Buyer regarding the sufficiency, accuracy, completeness or correctness of any information or report prepared by any party other than Seller or its affiliates. Seller does not provide any representation or warranty to Buyer concerning the skill or competency of any third party producing such information.
- (xii) No work has been performed on behalf of Seller which has not been paid for or which could give rise to any mechanic's or materialmen's lien being filed against the Property.
- (xiii) Seller has not received notice of violations of the laws, ordinances, rules or regulations of any governmental authority having jurisdiction over the Property, including, without limitation, those relating to Hazardous Substances (hereinafter defined), nor does Seller have knowledge of any facts which, if known by any such authority, would cause a violation to be placed thereon.
- (xiv) Seller has no knowledge of any ordinance or resolution authorizing improvements, the cost of which might be assessed against the owner of the Property, and, to the best of Seller's knowledge, information and belief, no such ordinance or resolution is pending or contemplated.
- (xv) The sale or conveyance of the Property contemplated herein is not subject to approval by any Court having jurisdiction over the Property, including but not limited to a Bankruptcy Court.

Seller's representations and warranties set forth in this Section 10 shall survive Closing.

- (e) As of the Effective Date and at all times during the Option Period, or if Buyer exercises the Option, until the Closing, Buyer represents and warrants as follows:
- (i) Buyer has full right, power and authority to enter into this Agreement, and to acquire the Property in accordance with the terms and provisions of this Agreement. Each person executing this Agreement on behalf of Buyer represents and warrants that such person is duly authorized to act on behalf of Buyer in executing this Agreement, and that this Agreement constitutes a valid and legally binding obligation of Buyer enforceable against Buyer in accordance with its terms.
  - (ii) The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party or by which Buyer is bound.
  - (iv) Neither Buyer nor, to Buyer's actual knowledge, its affiliates, is in violation of the Anti-Money Laundering and Anti-Terrorism Laws. Neither Buyer nor, to Buyer's actual knowledge, its affiliates, is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time. Neither Buyer nor, to Buyer's actual knowledge, its affiliates or, without inquiry, any of its brokers or other agents, in any capacity in connection with the purchase of the Property (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists referenced above, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws. Neither Buyer, nor any person controlling or controlled by Buyer, is a country, territory, individual or entity named on a Government List, and the monies used by Buyer in connection with this Agreement and amounts committed with respect hereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a list maintained by the federal government or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

(v) Buyer's intended market rate rental residential project ("Project") shall be developed in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York. The deed will contain provisions stating that the Buyer is required to complete construction in compliance with all State, County and Local standards for occupancy within three (3) years of the date of the deed, plus any unused portion of the Option Period as defined in Paragraph 2 above. As an example, if the Option is exercised two years after the date of the Option, then the time limit during which the project must be completed shall be the three (3) years indicated above plus two (2) additional years of the unused Option Period, for a total of five (5) years from the date of the deed. Within such time period, including any unused portion of the Option Period, the Buyer must obtain a Certificate of Occupancy for all buildings on the property. Notwithstanding the preceding provisions of this paragraph, the Buyer may request of the Newburgh City Manager that the time period to complete construction be extended so long as Buyer is in good faith moving forward with construction of the Project. In addition, the Buyer may request of the Newburgh City Manager that the time period to complete construction shall be extended if delay is caused by war, weather, acts of god or other circumstances outside Buyer's control (strikes, etc.) or market conditions. The City Manager shall respond to Buyer's request(s) within a reasonable period of time and shall not unreasonably deny any request by Buyer to extend the construction time deadline. If the City Manager denies Buyer's request, Buyer may submit such request to the City Council which shall respond to Buyer's request(s) within a reasonable period of time and shall not unreasonably deny any request by Buyer to extend the construction time deadline. If the Buyer has not complied with the above provisions regarding rehabilitation of the property and timely completion of the project, then the title to the property shall revert to the City. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued, except that the property may be conveyed or transferred to another entity in which Buyer has an ownership interest.

(vi) With respect to the Buyer's intended Project to be constructed on the Property, the Buyer represents that it will ask its engaged construction managers to try to meet a hiring goal during construction of a minimum of thirty (30%) percent of the total paid construction work shall be performed by qualified City of Newburgh residents for contracting, subcontracting and servicing opportunities for development and construction. The Buyer will ask its contractors to promote apprenticeship training as authorized by Section 816-b of the New York Labor Law in that each contractor, its successor and assigns, and subcontractors shall to the extent reasonably practicable, employ in its regular work force City of Newburgh residents who are enrolled and participating in an Apprenticeship Program.

Buyer's representations and warranties set forth in this Section 10 shall survive Closing.

**11. Risk of Loss; Condemnation:**

(a) In the event of damage or destruction of all or any portion of the Property by wind, water, fire or other casualty, Seller will promptly notify Buyer of the nature and extent of such damage or destruction. In such event, Buyer, in its sole discretion, within thirty (30) days of such notice, may either terminate this Agreement, obtain an assignment of insurance proceeds from Seller or apply insurance proceeds actually received by Seller as of the Closing to the Purchase Price. Prior to the Closing, risk of loss with respect to the Property shall be on Seller.

(b) Promptly upon obtaining knowledge of any threatened or filed condemnation proceeding against all or any portion of the Property, Buyer and Seller will notify the other party of such proceeding. In such event, Buyer, in its sole discretion, may either terminate this Agreement, obtain an assignment of condemnation proceeds from Seller or apply condemnation proceeds actually received by Seller as of the Closing to the Purchase Price. If Buyer elects to terminate this Agreement pursuant to this paragraph, Seller shall refund to Buyer the Option Payment.

**12. Termination of Option:** Notwithstanding anything contained in this Agreement to the contrary, Buyer, in its sole and exclusive discretion, may terminate this Agreement at any time during the Option Term by delivering to Seller a Buyer Termination Notice. In the event of such a termination by Buyer, except in the case where such termination results from a material breach by Seller or as otherwise expressly provided herein, Seller shall be entitled to retain the Option Price made as of the date the Buyer Termination Notice is delivered, provided that Buyer shall pay to Seller any unpaid Option Price that was due and payable as of the date the Agreement is terminated. In no event shall Buyer be entitled to any damages or relief (including, without limitation, consequential damages, lost profits, or equitable relief).

**13. Regulatory Compliance.** Each of the Parties shall comply with all applicable laws, rules, and regulations with respect to the transactions contemplated hereby.

**14. Governing Law; Jurisdiction; Miscellaneous:**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and both Seller and Buyer shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed

to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect and the Parties shall negotiate in good faith to agree upon and implement replacement terms that most closely preserve the economic costs and benefits inherent in the impossible or unenforceable provision(s). In the event of a dispute under this Agreement, Buyer and Seller agree that the appropriate forum for any such disputes shall be a court of competent jurisdiction in Orange County, New York. The court shall award the reasonable attorney's fees and other costs and expenses related to the dispute to the prevailing party.

- (b) Except as otherwise expressly set forth in this Agreement, each Party will pay its own (and its representative's) fees and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the negotiation of the transaction documents. In the event of litigation between the Parties, the prevailing Party shall be entitled to be awarded all fees, costs and expenses incurred in respect of such litigation, including reasonable attorneys fees.
- (c) Nothing in this Agreement shall be construed as implying or intending any third party beneficiaries to this Agreement.
- (d) Each party acknowledges that it has had the opportunity to have counsel review this Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring any Party by virtue of the authorship of any of the provisions of this Agreement.
- (e) Any notices required hereunder shall be in writing, shall be transmitted by certified mail, postage prepaid, return receipt requested, or by nationally recognized overnight courier, shall be deemed given when received or when receipt is refused, and shall be addressed to the Parties as follows:

- (i) If intended to Seller, to:

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

with copy to:

City of Newburgh  
City Hall  
83 Broadway

Newburgh, New York 12550  
Attn: Office of Corporation Counsel

(ii) If intended to Buyer, to:

FD Water Street Holdings LLC  
c/o Joan P. Kaplan  
5 Dogwood Hills Road  
Newburgh, NY 12550

with copy to:

Glen L. Heller, Esq.  
Drake Loeb PLLC  
555 Hudson Valley Avenue  
Suite 100  
New Windsor, NY 12553

- (f) This Agreement may be executed in multiple counterparts each of which shall be considered an original. Any signature page that is faxed or transmitted electronically shall be effective as an original signature page. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- (g) This Agreement constitutes the entire agreement between the Parties and shall supersede all prior negotiations, understandings and agreements of the Parties relative to the subject matter of this Agreement. This Agreement cannot be amended except as agreed to in writing by the parties.
- (h) Nothing contained herein shall create a joint venture or partnership between Buyer and Seller, or an agency principal relationship.
- (i) This Agreement is solely for the benefit of Buyer and Seller and nothing contained in this Agreement shall be deemed to confer upon anyone other than Buyer and Seller any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement are imposed solely and exclusively for the benefit of each such party as provided therein and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Buyer or Seller will refuse to consummate the transactions contemplated by this Agreement in the absence of strict

compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Buyer or Seller (as applicable) if, in each party's sole discretion, such party deems it advisable or desirable to do so.

- (j) The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof. All references herein to the word "including" shall be deemed to be references to "including, without limitation."
- (k) Buyer and Seller each acknowledge and agree that this Agreement is legally binding document and that each party has had a fully opportunity to have its respective attorney review, revise and negotiate this Agreement. Consequently, neither party shall be deemed to have had the responsibility of drafting this Agreement if this Agreement at any time is construed or interpreted.
- (l) This Agreement may not be assigned or transferred, directly or indirectly, by Seller without the prior written consent of Buyer. This Agreement may not be assigned or transferred, directly or indirectly, by Buyer without the prior consent of Seller; provided, however, this Agreement may be assigned by Buyer without Seller's consent to any corporate affiliate of Buyer, meaning any entity in which the principals of Buyer have an ownership interest. In the event that Buyer assigns this Agreement, such assignment shall not release Buyer from its obligations under this Agreement, but rather Buyer and the applicable assignee shall be jointly and severally liable for such obligations. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not intended and shall not be construed to create any rights in or to be enforceable in any part by any other person or entity.
- (m) The submission of a draft of this Agreement or a summary of some or all of its provisions, or the acceptance of a letter of intent to an agreement, does not constitute a grant of an option or an offer to sell the Property, it being understood and agreed that neither Seller nor Buyer shall be legally bound with respect to the granting of an option or the sale or purchase of the Property unless and until this Agreement has been executed by both Seller and Buyer and a fully executed copy has been delivered to each of them.

Seller and Buyer execute this Agreement on the date(s) shown, intending to bind themselves and their respective heirs, personal representatives, executors, successors and assigns.

**BUYER:**

FD Water Street Holdings LLC

By: \_\_\_\_\_  
Name: JOAN P. KAPLAN  
Title: Manager

**SELLER:**

CITY OF NEWBURGH, NEW YORK

By: \_\_\_\_\_  
Name: Michael G. Ciaravino  
Title: City Manager  
Per Resolution No.

DRAFT

EXHIBIT "A"  
LEGAL DESCRIPTION OF PROPERTY

That certain parcel of land located at \_\_\_\_\_, together with the improvements thereon, situated in Newburgh, Orange County [**Legal description to be confirmed.**]

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