



City of Newburgh Council Work Session  
*Sesión de trabajo del Concejal de la  
Ciudad de Newburgh*

January 22, 2015

6:00 p.m.

AGENDA

1. Presentations/ Presentaciones:
  - a. A presentation by Jim Taylor regarding the renewal of agreement with Taylor Recycling.
2. Reminder: Comptroller's Report:/Reporte del Contralor:  
Monthly Financial Summary/*Resumen Mensual Financiero*
3. Planning and Economic Development
  - a. Resolution No. ( )-2015  
A resolution to authorize the conveyance of real property known as 162 Broadway (Section 30, Block 2, Lot 29) at private sale to Jing Had Liang and Wei Rong Lou for the amount of \$70,000.00.
  - b. Resolution No. ( )-2015  
A resolution to authorize the conveyance of real property known as 36 Carter Street (Section 22, Block 2, Lot 27) at private sale to Marina Tsesarskya for the amount of \$15,000.00.
  - c. Resolution No. ( )-2015  
A resolution to authorize the conveyance of real property known as 151 Lander Street (Section 18, Block 4, Lot 43), 153 Lander Street (Section 18, Block 4, Lot 44.1) and 153 Lander Street rear (Section 18, Block 4, Lot 44.2) at private sale to Ana Vega Ovalle for the amount of \$22,000.00.
  - d. Resolution No. ( ) – 2015  
A resolution to authorize the conveyance of real property known as 374 Liberty Street (Section 10, Block 1, Lot 31) at private sale to Nigel Osborne and Janelle Osborne for the amount of \$16,500.00.
  - e. Resolution No. ( )-2015  
A resolution authorizing the execution of a Release of Restrictive Covenants and Right of Re-entry from a deed issued to Jeffry Normil to the premises known as 6-12 William Street and 192 Ann Street (Section 35, Block 2, Lot 25)

4. Grants/Contracts and Agreements / Becas / Contratos y Convenios

a. Resolution No. ( )-2015

A resolution authorizing an agreement between the City of Newburgh and Publicsector HR Consultants, LLC for professional Human Resources Services

b. Resolution No. ( )-2015

A resolution approving the consent judgment and authorizing the City Manager to sign such consent judgment in connection with the tax certiorari proceedings against the City of Newburgh in the Orange County Supreme Court bearing Orange County Index Nos. 7726-2009, 7476-2010, 6703-2011, 5660-2012 and 6047-2013 involving Section 29, Block 2, Lots 5 and 6 (TDR Funding Corp.)

c. Resolution No. ( )-2015

A resolution authorizing the City Manager to accept \$100,000.00 from the Newburgh Enlarged City School District to fund the salary and benefits of one police officer to be hired to backfill police department personnel currently serving in the City's secondary school as a Community Resource Officer

d. Resolution No. ( )-2015

A resolution authorizing the City Manager to execute an amendment to an agreement between the City of Newburgh and Mesh Realty Group, Inc. to provide for the continuation of residential property management services.

5. Engineering / Ingeniería:

a. Resolution No. ( )-2015

*A resolution authorizing the City Manager to accept a proposal and enter into an agreement with Arcadis of New York Inc. for professional services to prepare an addendum to the Phase I Long Term Control Plan for the City's Combined Sewer Collection System in connection with SPDES Permit NY No. 0026310 issued by the NYS Department of Environmental Conservation for an amount not to exceed \$82,950.00.*

b. Resolution No

A resolution authorizing the award of a bid and the execution of a contract with Black Electric, Inc. in connection with the Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project – Contract 3 – electrical construction at a cost of \$56,700.00.

c. Resolution No. ( )-2015

A resolution authorizing the City Manager to accept a proposal and execute a contract with the Chazen Companies to prepare a Landfill Disturbance Plan for the Newburgh DPW parcels in connection with the 5 Scobie Drive Industrial Project at a cost not to exceed \$26,760.00.

6. Discussion / Discusión:

a. Ordinance No. ( )-2015

An Ordinance amending Section 163-1 “Schedule of Code Fees” of Chapter 163 “Fees” of the Code of the City of Newburgh.

- Tobacco 276-7
- Summer Camp

- b. Amendment to Personnel Analysis Book
- c. Mid Broadway Project
- d. Zoning Introduction Update
- e. Aids to Homeownership
- f. Development Focus – Properties and Zoning
- g. City Council Goals for 2015
  - County Legislators
- h. Open Firefighter Position
- i. Review of Charter – Appointments to City Manager

7. Executive Session/ Sesión Ejecutiva:

- a. Pending litigation /Litigio pendiente

RESOLUTION NO.: 121 - 2011

OF

JULY 11, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH  
TBE-MONTGOMERY LLC FOR SOLID WASTE PROCESSING AND DISPOSAL

WHEREAS, the City of Newburgh seeks to better manage the disposal of its solid waste;  
and

WHEREAS, TBE-Montgomery LLC has developed a process for sorting, separating and  
collection solid waste and using such waste to generate renewable electrical energy; and

WHEREAS, TBE-Montgomery LLC has presented a proposal to collect and dispose of  
the City's solid waste to use in its renewable electrical energy process; and

WHEREAS, TBE-Montgomery LLC has presented a proposal to collect the City's solid  
waste at a substantially lower cost than the City currently pays for disposal of solid waste at the  
Orange County Transfer Station; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh,  
New York that the City Manager be and he is hereby authorized to enter into an agreement with  
TBE-Montgomery LLC, in substantially the same form as annexed hereto and subject to such  
other terms and conditions as may be required by the Corporation Counsel, for the disposal of  
solid waste.

Acosta-Ramirez  
I, Lisette ~~Williams~~, Deputy Clerk of the City of Newburgh,  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held 7-19-2011  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 21<sup>st</sup> day of July 2011

Lisette Acosta-Ramirez  
Deputy City Clerk

# The City of Newburgh Office of the Corporation Counsel

City Hall – 83 Broadway  
Newburgh, New York 12550

Michelle Kelson  
Corporation Counsel

Tel. (845) 569-7335  
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Tiffany Reis  
Assistant Corporation Counsel

## MEMORANDUM

TO: Elizabeth Evans, Executive Assistant to the City Manager ✓  
Cheryl Gross, City Comptroller  
George Garrison, Superintendent of Public Works  
Lorene Vitek, City Clerk

FROM: Michelle Kelson, Corporation Counsel

RE: The City of Newburgh with TBE-Montgomery  
Resolution No.: 121-2011

DATE: July 25, 2011

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Attached is a copy of the fully executed agreement between the City of Newburgh and TBE-Montgomery, which was authorized by the City Council via Resolution No.: 121-2011 of July 11, 2011.

The original agreement is attached to the City Clerk's copy of this memorandum for filing in her office.

Thank you for your assistance.

  
\_\_\_\_\_  
MICHELLE KELSON

MK/dt  
Attachment

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I, Lisette ~~Williams~~, Deputy Clerk of the City of Newburgh,  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held 7-19-2011  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 21<sup>st</sup> day of July 2011

Lisette Acosta-Ramirez  
Deputy City Clerk

## **SOLID WASTE PROCESSING AND DISPOSAL AGREEMENT**

THIS SOLID WASTE PROCESSING AND DISPOSAL AGREEMENT is made and dated as of July 22, 2011, between the City of Newburgh, NEW YORK, 83 Broadway, Newburgh, NY 12550, a municipality and political subdivision of the State of New York, (referred to herein as the "MUNICIPALITY"), and TBE-MONTGOMERY LLC, 340 Neelytown Road, Montgomery, NY 12549, (referred to herein as the "CONTRACTOR").

### **RECITALS**

1. The Contractor intends to construct, own and operate a solid waste receiving and recycling, biomass fuel preparation and waste power production facility located in Montgomery, Orange County, New York (the "Facility"). The Municipality and private collectors doing business in the Municipality will collect or cause to be collected acceptable Municipal Solid Waste ("Acceptable Waste"), and will deliver or cause to be delivered such Acceptable Waste directly to the Facility Site, where the Contractor will sort and separate such Acceptable Waste and gasify biomass to generate renewable electric energy.
2. To assist the Municipality to meet the State policy and goals for reduction of disposal into landfills and to reduce the costs of modifying and operating landfills, and pursuant to N.Y. Gen. Mun. Law Article 6 - § 120-W(2), the Municipality has agreed to deliver and Contractor has agreed to receive and utilize Acceptable Waste for sorting and separating and the production of electric energy from the Facility.

### **I. DEFINITIONS AND INTERPRETATIONS.**

"Acceptable Waste" shall have the meaning set forth in the Recitals.

"Base Fee" has the meaning set forth in Section 6.01 herein.

"Calendar Week" means a period of seven (7) consecutive days beginning on Sunday.

"Calendar Year" means a period of three hundred sixty-five consecutive days beginning on January 1.

"Commencement Date" shall mean the date that the Facility achieves commercial operation.

"Contract Year" means the twelve month period commencing on the Commencement Date and each twelve month period thereafter.

"Contractor" has the meaning set forth in the Preamble, and its permitted successors and assigns.

"Credit Institution" means a bank or other financial institution, or a group of banks or financial institutions, acting through an agent, severally, or otherwise, providing debt

and/or equity financing, including tax equity financing, or credit support for debt financing, for the Facility.

"Designee" or "Designees" shall mean a Person or Persons authorized by the Municipality at any time to collect solid waste generated within the Municipality.

"Escalation Rate" shall mean an annual rate of two and 25/100 percent (2.25%).

"Environmentally Acceptable" means meeting all applicable federal government, State of New York, and Municipality laws, ordinances and regulations relating to disposal of Solid Waste.

"Expected Revenues" has the meaning set forth in Section 8.01(b)(ii).

"Facility" has the meaning set forth in the Recitals.

"Facility Site" means the site on which the Facility is located and the location of the intended delivery of Acceptable Waste by the Municipality to the Contractor, 340 Neelytown Road, Montgomery, New York 12549.

"Hazardous Waste" means any material defined as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), or applicable state laws and the rules, regulations, policies and guidelines promulgated thereunder, as each may be amended from time to time, or any waste which, by reason of its composition or characteristics is a toxic substance or hazardous waste as defined in the Resource Conservation and Recovery Act, (42 U.S.C. § 6901 et seq.), as amended, and related federal, state and county laws and regulations, or in any future additional or substitute federal, state or county laws and regulations pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; any source, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, and related regulations; low level radioactive waste, or any other regulated material posing a threat to health or safety or causing injury to or adversely affecting the operation of the Facility, including, without limitation, regulated pathological, medical or biological wastes, septic, cesspool or other human wastes, human and animal remains, cleaning fluids, crankcase oils, cutting oils, paints, acids, caustics, poisons, explosives and drugs. If any governmental agency having appropriate jurisdiction shall determine that substances which are not, as of the date hereof, considered harmful, toxic, or dangerous, are in fact harmful, toxic, or dangerous, or are hazardous or harmful to health, then any such substance shall thereafter constitute Hazardous Waste for purposes of this Agreement. If all government agencies having appropriate jurisdiction shall determine that a given substance which, as of the date hereof, was deemed to be a Hazardous Waste, is no longer harmful, toxic or dangerous, then any such substance shall thereafter no longer constitute Hazardous Waste for purposes of this Agreement.

"Maximum Delivery Amount" shall have the meaning set forth in Section 3.02.

"Municipal Solid Waste" means commercial, residential, industrial and institutional nonhazardous Solid Waste, but does not include Recyclables.

"Municipality" has the meaning set forth in the Preamble.

"Person" means any individual, corporation, partnership, trust, government agency or other legal entity.

"Planned Outage" means a planned interruption of or reduction in the Facility's ability to produce electricity or an interruption or reduction in the Facility's production of electricity for the purpose of inspection, testing or other routine maintenance that requires such planned interruptions.

"Recyclables" means Solid Waste that exhibits the potential to be used repeatedly in place of a virgin material.

"Solid Waste" means all putrescible and non-putrescible materials or substances that are discarded as being spent, useless, worthless or in excess to the owners at the time of discard.

"State" means the State of New York.

"Ton" means a "short ton" of 2,000 pounds.

"Unacceptable Waste" means (i) Hazardous Waste, other hazardous chemicals or materials, radioactive materials, motor vehicles, liquid and semi-liquid wastes, other than such insignificant quantities of the foregoing as are customarily found and are incidentally included in normal household and commercial waste and as are permitted by law to be treated and disposed of in facilities not specifically permitted or licensed to treat or dispose of such materials; (ii) any item either smoldering or on fire; (iii) any items of waste which, at the time of delivery to Facility Site, would normally not be disposed of in a sanitary landfill; and (iv) any items of waste which are prohibited by any judicial decision, order or action of any federal, State or county government or any agency thereof, or any other regulatory authority, or any applicable law or regulation, from being used in the Facility.

"Uncontrollable Circumstances" shall have the meaning assigned in Article V of this Agreement.

"Unplanned Outage" means an unplanned component failure (immediate, delayed, postponed, or start-up failure) or other condition that requires or causes the Facility to be removed from service immediately, in advance of the next Planned Outage, or any other unplanned interruption or reduction in electricity generation from the Facility for any reason.

## **II. DUTIES OF CONTRACTOR.**

### **2.01 ACCEPTANCE OF ACCEPTABLE WASTE.**

(a) After the Commencement Date, the Contractor shall accept and process all Acceptable Waste delivered to the Facility Site by the Municipality or its Designees regardless of the mechanical status of the Facility, unless the Facility is unable to operate due to factors constituting Uncontrollable Circumstances; provided, however, that in any particular Contract Year the Contractor shall not be required to accept more than the Maximum Delivery Amount.

(b) The Contractor shall identify and shall have the right to reject or separate and dispose of Unacceptable Waste delivered by the Municipality or its Designees to the Facility then serving the Municipality and shall do so in an Environmentally Acceptable manner subject to reimbursement by the Municipality for any costs and expenses of rejection, separation or disposal.

(c) Upon acceptance of the Acceptable Waste, such Acceptable Waste shall become the property of the Contractor and may be used by the Contractor in any lawful manner.

**2.02 RIGHT OF CONTRACTOR TO REJECT CERTAIN WASTE; HANDLING OF UNACCEPTABLE WASTE.** The Contractor shall have the right to reject, and shall have no obligation to dispose of, any of the following waste brought by any Person to the Facility Site and shall have the right to prevent the unloading of any vehicle bringing such waste if such waste is properly rejected:

(a) Unacceptable Waste (it being agreed that in the event the Contractor determines that a load contains both Acceptable Waste and Unacceptable Waste, it shall be entitled to reject and prevent the unloading of the entire load);

(b) Acceptable Waste brought to the Facility Site at times other than the hours designated for delivery by the Contractor, which hours shall be set out in Schedule 2;

(c) Acceptable Waste brought to the Facility Site in excess of the Maximum Delivery Amount, if the Facility is unable for any reason to receive and process such amounts; and

(d) Solid Waste brought to the Facility Site by a Person who is not the Municipality or its Designee.

**2.03 RIGHT OF CONTRACTOR TO ACCEPT SOLID WASTE FROM OTHER PERSONS.** The Contractor may accept, either under contract or on a spot market basis, Acceptable Waste from any other Person.

### **2.04 REGULATORY REQUIREMENTS.**

(a) **Permits and Licenses.** The Contractor shall be responsible, at its own expense, for obtaining and maintaining compliance under, and obtaining any necessary extensions of, all permits, licenses, zoning ordinances, and other federal, state, county and local

approvals, including those related to air and water pollution, solid waste, siting, land use, wetlands, flood plain, noise, odor, and building, which may be necessary for the construction, operation, maintenance and repair of the Facility. If an administrative agency, department, authority, political subdivision or other instrumentality to which an application for a permit required for the operation, maintenance or repair of the Facility fails to take action, whether or not a specific time limitation for such action is prescribed by law, the failure to act shall, so long as the application therefore has been timely filed and is being diligently pursued, be treated as an Uncontrollable Circumstance if the failure to act has a material adverse effect on the ability of the Contractor or the Municipality to satisfy their obligations under this Agreement. Any applicable time limitation shall be deemed to have commenced on the date when the appropriate application and all related information called for by the application and/or permitting agency have been filed and any other prerequisites established by the applicable statutes and regulations have been met.

(b) **Adherence to Law.** The Contractor shall (i) design, construct and operate the Facility and (ii) utilize the Acceptable Waste in a manner which complies in all material respects with any applicable law, ordinance, rule, regulation, order, permit, or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

**2.05 SAFETY PRECAUTIONS.** In compliance with applicable federal, state, county, and local regulations, the Contractor shall initiate, maintain and supervise safety precautions and programs in connection with the operation and maintenance of the Facility.

**2.06 TRANSPORTATION.** The Municipality shall arrange and pay for transportation of all Acceptable Waste accepted by the Contractor at the Facility Site.

**2.07 UNPLANNED OUTAGES.** In the event of an Unplanned Outage, Contractor shall: (i) use all commercially reasonable efforts to resume normal operations of the Facility as quickly as possible, and (ii) if necessary, arrange for interim processing or disposal of all Acceptable Waste in an Environmentally Acceptable manner and deliver to such interim processing or disposal site Acceptable Waste delivered to the Facility Site and paid for by the Municipality, at such cost as provided in Article VI.

**2.08 RECORDS.**

(a) The Contractor or its designee shall operate and maintain (including periodic accuracy testing) a motor truck scale at the Facility Site, calibrated to the accuracy required by Orange County for public weighing facilities, to weigh all vehicles delivering Acceptable Waste to the Facility. The Municipality shall cause its vehicles, and those of any Designees, to have identification permanently indicated and conspicuously displayed thereon. Each vehicle will be weighed before entering and prior to departing such Facility Site, with the date, time, truck identification and weights (loaded and unloaded) to be entered on a weight record. The scale records will be used as a basis for calculating fees, charges and credits under this Agreement. If the weighing facility at the Facility Site is out of service, the Contractor shall, subject to any applicable state regulation, either obtain alternate temporary weighing capability

or estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and data based on pertinent historical information.

(b) The Contractor or its designee shall maintain daily records of the total Acceptable Waste tonnage delivered by the Municipality and its Designees. Such daily records shall include detailed and summary listings of tonnage delivered by the Municipality and its Designees to the Facility Site, the estimated amount of such waste rejected as being other than Acceptable Waste, and such other records as are necessary to implement the provisions of this Agreement. Summary information for each month shall be provided to the Municipality within ten (10) business days after the end of such month. Copies of all daily records and weight tickets shall be maintained by the Contractor for a period of at least three (3) years, or for such longer period required by law, and shall be made available for inspection by the Municipality during normal business hours upon reasonable notice. In the event the Municipality is required by applicable law or regulation to file reports pertaining to the operation of the Facility, the Contractor shall provide the Municipality with the information required to compile such reports.

**2.09 INDEMNIFICATION.** The Contractor will protect, indemnify and hold the Municipality, its employees and its Designees harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against the Municipality by third parties including reasonable attorneys' fees, and will, if requested, defend the Municipality in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property (including environmental damage), or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the Contractor or its agents or employees acting on behalf of the Contractor. The Municipality shall promptly notify the Contractor of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall, at its option, give the Contractor the opportunity to defend such claim; and shall not settle such claim without the approval of the Contractor, which approval shall not be unreasonably withheld. These indemnification provisions are for the protection of the Municipality only, do not apply to claims of the Municipality itself against the Contractor under this Agreement or any related agreement, and shall not create any benefit or liability to third parties.

### **III. DUTIES OF THE MUNICIPALITY.**

#### **3.01 DELIVERY OF ACCEPTABLE WASTE.**

(a) Commencing on the Commencement Date and continuing throughout the term of this Agreement, the Municipality shall, at a rate of at least two (2) deliveries per Calendar Week (unless an alternative rate of delivery has been agreed to by the Contractor and the Municipality and set out on Schedule 2), deliver or cause to be delivered to the Contractor at the Facility Site all Acceptable Waste collected for disposal by the Municipality and its Designees during each Contract Year subject to the Contractor's right to reject the Municipality's deliveries in excess of the Maximum Delivery Amount.

(b) The parties intend that all Acceptable Waste collected for disposal by the Municipality be delivered to the Contractor at the Facility Site, and, accordingly, unless the

Contractor otherwise elects, the Municipality shall not deliver or provide any such Acceptable Waste to any other disposal sites or Persons.

(c) In the event the Contractor determines there is a need for Acceptable Waste during start-up and testing operations prior to the Commencement Date, the Municipality has the obligation to deliver to the Facility Site all Acceptable Waste collected by the Municipality or its Designee at times that are mutually agreed to by the Contractor and the Municipality. The Contractor shall give the Municipality at least sixty (60) days prior written notice of the commencement of start-up and testing operations at the Facility and its request for the receipt of Acceptable Waste quantities from the Municipality required for such limited operations. During start-up and testing operations, the Contractor shall give the Municipality at least two (2) weeks prior written notice of any change in such quantities.

(d) In delivering or causing to be delivered Acceptable Waste to the Facility Site, the Municipality shall comply with all applicable state, county and local rules and regulations.

(e) The Parties shall carry out the obligations under this Section in accordance with the provisions of Schedule 2, which may be modified from time to time.

**3.02 MAXIMUM DELIVERY AMOUNT.** For purposes of Sections 2.01(a) and 3.01(a), the Maximum Delivery Amount for any Contract Year shall be one hundred twenty percent (120%) of the total number of Tons of Acceptable Waste delivered to the Facility Site during the first Contract Year following the Commencement Date.

**3.03 PAYMENT OF FEES.** The Municipality shall pay the Contractor all Fees as set forth in Article VI.

**3.04 INDEMNIFICATION.** The Municipality will, to the extent permitted by applicable law, protect, indemnify and hold the Contractor harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits of third parties against the Contractor including reasonable attorneys' fees, and will defend the Contractor, at the Contractor's option, in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property, or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the Municipality, its agents or employees acting within the scope of their employment or caused by or resulting from the handling or disposal of Unacceptable Waste by the Contractor in the performance of its duties hereunder. The Contractor shall promptly notify the Municipality of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall give the Municipality the opportunity to defend such claim; and shall not settle such claim without the approval of the Municipality, which approval shall not be unreasonably withheld. The above provisions are for the protection of the Contractor only, do not apply to claims of the Contractor against the Municipality under this Agreement or any related agreements, and shall not create any benefit or liability to third parties.

**IV. CONDITIONS PRECEDENT TO DUTIES OF CONTRACTOR AND DUTIES OF THE MUNICIPALITY.**

4.01 The obligations of the Municipality to commence delivery, and of the Contractor to commence receipt, of Acceptable Waste are conditional upon the occurrence of all of the following:

(a) The Contractor shall have received a written commitment from a Credit Institution for a loan, bond or equity securities underwriting or other similar type of non-recourse financing (or credit support for such financing), repayable during the term of this Agreement and on such terms and conditions as are satisfactory to the Contractor in its sole discretion;

(b) The Contractor shall have received all necessary federal, state and local approvals necessary to permit disposal of Acceptable Waste at the Facility; and

(c) The Contractor shall have advised the Municipality in writing that the Facility Site is ready to receive the Municipality's Acceptable Waste.

4.02 Section 9.02 shall apply if the above conditions precedent are not met or waived.

**V. UNCONTROLLABLE CIRCUMSTANCES.**

5.01 Any act, event or condition, shall be deemed an Uncontrollable Circumstance to the extent that it materially and adversely affects the ability of any party to perform its obligations hereunder, if such act, event, or condition is beyond the reasonable control of and is not also the result of the willful or negligent action or inaction, principally of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. The good faith contesting of, or the failure to contest, action or inaction of a third party, shall not be construed as willful or negligent action or lack of reasonable diligence by the party claiming that such third party action or inaction constitutes Uncontrollable Circumstances. Acts or events constituting Uncontrollable Circumstances include, but shall not be limited to, the following:

(a) An act of God, such as hurricane, landslide, lightning, earthquake or flood; fire, explosion, or similar occurrence; acts of a public enemy, extortion, sabotage or civil disturbance;

(b) The failure of any federal, state, county or city public agency or private utility having jurisdiction in the area in which the Facility Site is located to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Facility Site, which are required for the construction, start-up, testing, operation or maintenance of such facilities;

(c) The failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to if such failure is caused by an Uncontrollable Circumstance and the affected party is not reasonably able to obtain substitute labor, services, materials or equipment on terms and conditions no less favorable to the affected party;

(d) Governmental pre-emption of materials or services in connection with a public emergency, any act or omission of the Municipality in their governmental capacity or any condemnation or other taking by eminent domain of any portion of the Facility Site; or

(e) Any change in law which is (i) legally binding with respect to the design, construction, testing, utilization, operation or maintenance of the Facility Site, (ii) occurs subsequent to the date hereof, and (iii) has the effect of temporarily or permanently preventing a party from performing any of its obligations hereunder including the following: any change in, or adoption of, any constitution, charter, act, statute, law, ordinance, code, rule, regulation or order; or any change in the standards or criteria contained in a permit, which standards or criteria must be met in order for the Facility Site to be operated lawfully at the levels specified in this Agreement; any denial of an application for, delay in the review, issuance or renewal of or suspension, termination, interruption, imposition of a new condition in connection with the renewal of or failure of renewal, on or after the date hereof of any governmental permit, license, consent, authorization or approval, or any other legislative or administrative action or refusal to act of the United States of America or the State of New York or any agency, department, authority, political subdivision or other instrumentality thereof (except that no action of the Municipality or any instrumentality thereof shall excuse the performance of the Municipality under this Agreement); or any decree, judgment or order of a court. Any change of law which requires the Facility to install or upgrade equipment shall qualify hereunder as a change of law, and the time required to install or upgrade equipment, if it requires a shutdown or slowdown of the operation of the Facility, shall qualify as an Uncontrollable Circumstance.

5.02 Any party shall be excused from performance hereunder when its nonperformance was caused directly or indirectly by Uncontrollable Circumstances. The party whose performance is affected shall give to the other parties prompt written notice of the Uncontrollable Circumstances, and thereupon the obligations of the party giving the notice, so far as such obligations are affected by the Uncontrollable Circumstances, shall be suspended during such Uncontrollable Circumstances and for a reasonable time thereafter as required to remedy any physical damage or otherwise overcome the effect of such Uncontrollable Circumstances.

5.03 Any party excused from performing any obligation pursuant to Section 5.02 above shall promptly, diligently and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations hereunder.

## **VI. FEES.**

6.01 **BASE FEE.** The Municipality shall pay the Contractor a base fee of sixty-six dollars and no cents (\$66.00) per Ton of Acceptable Waste delivered by the Municipality or its Designees to the Facility Site and accepted by the Contractor (as provided in Article II) ("Base Fee").

6.02 **ESCALATION.** The Base Fee shall escalate annually, commencing January 1, 2014], at the Escalation Rate.

6.03 **INCREASE IN DEDUCTIONS AND FEES DUE TO INCREASED ENVIRONMENTAL LAW COMPLIANCE.** The Municipality recognizes that the Contractor

has entered into this Contact based upon law and governmental regulations in effect as of the date of this agreement. In the event that, from time to time after the Commencement Date, because of a change in any applicable environmental laws, regulations or ordinances, the operating costs of the Facility increase, then Contractor shall be entitled to recoup from the Municipality the increased operating costs by increasing the Base Fee; provided, however, that (a) thirty (30) days prior to the effective date of the increase, Contractor shall provide to the Municipality information, data and analysis supporting such increase, (b) the amount of any such increase shall be that amount which is sufficient to place the Contractor in a position with respect to financial consequence which shall be substantially equivalent to that in which the Contractor would have been had the change(s) in applicable environmental laws, regulations or ordinances requiring the increase not occurred, and (c) the increased cost to the Contractor will be apportioned equally among all municipalities with which Contractor has a Solid Waste Processing and Disposal Agreement with respect to the Facility.

#### **6.04 METHOD OF PAYMENT.**

(a) In accordance with Article VI, not earlier than the tenth day of each month after the Commencement Date, the Contractor shall invoice the Municipality for services rendered by the Contractor under this Agreement during the preceding month. The total amount of the invoice shall be the sum of the following: the number of Tons of Acceptable Waste delivered by the Municipality and its Designees and accepted by the Contractor during such month, multiplied by the then applicable fee per Ton including the applicable Escalation Rate.

(b) All invoices shall be delivered by hand, by commercial delivery service (such as Federal Express) or mailed first class, postage prepaid to the Municipality at the address set forth in Article XIII, and such invoices shall be paid within thirty (30) days after the date of the invoice.

(c) The Municipality may supply other addresses at its discretion at any time.

**6.05 ALTERNATE DISPOSAL COSTS.** Subject to Article V, in the event that the Contractor is unable to perform services in the manner contemplated by this Agreement, and the Contractor is forced to use alternate disposal methods for Acceptable Waste delivered and paid for by the Municipality, any resulting increase in the Contractor's costs shall be borne by the Contractor.

### **VII. INSURANCE, LETTER OF CREDIT BOND REQUIREMENTS.**

**7.01 INSURANCE.** The Contractor shall obtain at its own cost and expense the types of insurance listed herein.

Without limiting the Contractor's indemnification requirements, it is agreed that the Contractor accepts the following conditions and shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors to procure and maintain these same policies:

(a) **COMPREHENSIVE GENERAL LIABILITY OR COMMERCIAL GENERAL LIABILITY**, via the Occurrence Form, with minimum Combined Single Limits of \$5,000,000 per Occurrence, and \$5,000,000 Aggregate including:

- (i) Premises - Operations Coverage
- (ii) Completed Operations
- (iii) Contractual Liability
- (iv) Broad Form Property Damage
- (v) Independent Contractors'
- (vi) Protective Liability

Coverage may be written in layers, as long as each layer is on a "Following Form" basis, provided that the aggregate policy limits are not reduced. The policy must specifically state, by endorsement or otherwise, that this insurance applies to bodily injury, property damage, or personal injury arising out of premises and/or operations necessary or incidental to the project described herein, or any expansion thereof. The Municipality shall be named as an additional insured on such policies.

(b) **AUTOMOBILE LIABILITY**, with minimum limits of \$1,000,000 for any one accident, including all Owned, Non-Owned and Hired Motor Vehicles. The Municipality shall be named as additional insured on such policy.

- (c) **WORKERS' COMPENSATION: Statutory Limits.**
- (d) **EMPLOYERS' LIABILITY: \$500,000 each accident or disease.**
- (e) The Contractor may incur such deductibles as are standard in the industry.

The parties acknowledge that during the term of this Agreement certain Forms and types of coverage described in this Section 7.01 may change or may cease to be available on a commercially reasonable basis. In such event, the Contractor shall use reasonable efforts to obtain the closest equivalent Form or type of coverage then available.

**7.02 ACCEPTABILITY OF INSURERS.** Insurance shall be placed with insurance companies with an A.M. Best rating of no less than "A," unless proper financial information relating to the company is submitted to and approved by the Municipality prior to coverage being placed with such insurance company.

**7.03 EVIDENCE OF INSURANCE.** The Contractor shall procure and maintain insurance policies as described herein and shall furnish to the Municipality duplicate copies of all policies, including applicable endorsements. Since policies will expire before the completion of this Agreement, renewal certificates of insurance shall be furnished to the Municipality by the Contractor before the expiration date of each policy, for the term of this Agreement.

**7.04 EFFECT OF APPROVAL OF INSURANCE.** Approval of the insurance by the Municipality shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that the Municipality does not in any way represent that the specified limits of liability or coverage or policy forms are adequate to protect the interest or satisfy all liabilities of the Contractor.

**VIII. DEFAULT, DISPUTE RESOLUTION AND TERMINATION.**

**8.01 REMEDIES FOR DEFAULT.**

**(a) Default by Contractor.**

(i) Upon the occurrence of an Event of Default by the Contractor under this Agreement, and subject to the further provisions of this Article VIII, the remedies of the Municipality shall include compensatory damages, specific performance, and termination.

(ii) Termination by the Municipality shall be limited as set forth in Section 8.02 hereof.

(iii) Termination by the Municipality shall be subject to any applicable extension or Cure Period and to the rights of the Credit Institution under Section 8.09 hereof.

**(b) Default by Municipality.**

(i) Upon the occurrence of an Event of Default by the Municipality under this Agreement, the remedies of the Contractor shall include compensatory damages, specific performance and termination of this Agreement.

(ii) In the event this Agreement is terminated pursuant to Section 8.03(a)(v), the Contractor shall be entitled to receive from the Municipality liquidated damages in an amount equal to thirty percent (30%) of the Contractor's Expected Revenues, to be calculated as described below.

(A) If such termination occurs prior to the Commencement Date, the Contractor's Expected Revenues shall be calculated by (I) multiplying the amount of Solid Waste delivered or provided by the Municipality to Orange County or to another municipal or private facility or site for waste collection/disposal during the 12-month period immediately preceding termination of the Agreement by the Fees applicable to such 12-month period, and then (II) multiplying the amount determined in (I) by 20.

(B) If such termination occurs after the Commencement Date, but before the end of the first full Contract Year, the Contractor's Expected Revenues shall be calculated by (I) multiplying the amount of Solid Waste delivered or provided by the Municipality to Orange County or to another

municipal or private facility or site for waste collection/disposal during the 12-month period immediately preceding termination of the Agreement by the Fees applicable to such 12-month period, and then (II) multiplying the amount determined in (I) by the number of Contract Years remaining in the Agreement.

(C) If such termination occurs after the Commencement Date and after the end of the first full Contract Year, the Contractor's Expected Revenues shall be calculated by (I) multiplying the total Fees paid by the Municipality to the Contractor during the Contract Year preceding the termination of the Agreement by the amount of Acceptable Waste delivered by the Municipality during that Contract Year, and then (II) multiplying the amount determined in (I) by the number of Contract Years remaining in the Agreement.

(iii) Termination by the Contractor shall be limited as set forth in Section 8.03 hereof.

(iv) Termination by the Contractor shall be subject to any applicable extension or Cure Period.

## **8.02 EVENTS OF DEFAULT BY THE CONTRACTOR.**

(a) Each of the following shall constitute an Event of Default on the part of the Contractor, for which the Municipality may seek compensatory damages, specific performance, or termination of this Agreement, using the procedures set out herein.

(i) Contractor failure (which is not excused by Uncontrollable Circumstances), occurring at any time after the Commencement Date, to receive Acceptable Waste delivered by the Municipality or its Designee (up to the limits set forth in Sections 2.01(a)), for a continuous period of thirty (30) days.

(ii) Should the Contractor, its agents or employees acting in the scope of their employment be proven to have violated any law or regulation and such violation results in substantial liability to the Municipality which is not reimbursed by the Contractor within 30 days of the liability being payable.

(iii) Contractor failure to obtain and maintain the insurance required by Article VII.

(iv) A failure to pay or credit any amount of monies due by the Contractor to the Municipality under this Agreement when such amount becomes due and payable, and when such amount remains unpaid for thirty (30) days after written notice to the Contractor that such payment is past due; provided, however, that if the payment or credit is disputed, such thirty (30) day period shall begin at such time as a written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

(v) A failure by the Contractor to initiate receipt of Acceptable Waste from the Municipality within 180 days after the Commencement Date.

(vi) The failure or refusal by the Contractor substantially to fulfill any of its material obligations (other than the material obligations set forth in Section 8.02(a)) in accordance with this Agreement, unless such failure or refusal shall be excused or justified as provided under Article V hereof.

(vii) If, at any time, any material written representation or warranty made by the Contractor herein shall be determined to have been untrue or incorrect when made and such condition is shown to have a continuing material adverse impact on the Contractor's ability to perform its obligations under this Agreement.

(b) No failure or refusal under this Section 8.02 shall constitute an Event of Default unless and until:

(i) the Municipality shall have given prior written notice of the alleged Event of Default (describing such default in reasonable detail) to the Contractor and to the Credit Institution, as identified on Schedule 1, which may be modified by the Contractor from time to time; and

(ii) the circumstance creating the default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Municipality) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than sixty (60) days from the date of the notice given pursuant to Subsection 8.02(c)). If reasonable steps shall have been commenced to correct such default within such reasonable period of time, the same shall not constitute an Event of Default for as long as reasonable steps are continuing to correct such default with due diligence. For the purposes of this Section 8.02, "reasonable steps" shall be deemed to include the initiation by the Contractor of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the Contractor in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Municipality, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

(c) No correction of a default of the Contractor by or on behalf of the Municipality, or reasonable steps taken by the Municipality to correct a default of the Contractor, shall cause the Contractor's default to cease to be an Event of Default; provided, however, that the Contractor and the Credit Institution (pursuant to Section 8.09) shall have the prior right and opportunity to effect any correction or cure of a default or Event of Default.

### **8.03 EVENTS OF DEFAULT BY THE MUNICIPALITY.**

(a) Each of the following shall constitute an Event of Default on the part of the Municipality for which the Contractor may terminate this Agreement using the procedures set out herein, or, in any case, seek compensatory damages or specific performance against the Municipality:

(i) The failure by the Municipality to pay any amount of monies due to the Contractor under this Agreement when such amount becomes due and payable, and such amount remains unpaid for thirty (30) days after written notice to the Municipality that such payment is past due; provided, however, that if the payment demanded is disputed, such thirty (30) day period shall begin at such time as a written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

(ii) Should the Municipality, or its employees acting in the scope of their employment, be proven to have violated any law or regulation and such violation results in substantial liability to the Contractor which is not reimbursed by the Municipality within 30 days of the liability being payable.

(iii) The failure of the Municipality to fulfill any material obligation under this Agreement (other than the payment of monies governed by Section 8.03(a)(i)), unless such failure shall be excused or justified as provided in Article V hereof.

(iv) If, at any time, any representation or warranty made by the Municipality herein shall be determined to have been untrue or incorrect when made and such condition is shown to have a continuing material adverse impact on the Municipality's ability to perform its obligations under this Agreement.

(v) The diversion by the Municipality, prior to any Contract Year, or in any Contract Year of delivery of Acceptable Waste to other disposal sites or Persons; provided, however, if in any Contract Year, Contractor has exercised its right under Section 2.02(c) to reject Acceptable Waste in excess of the Maximum Delivery Amount, then the Municipality may deliver such rejected amounts of Acceptable Waste to other disposal sites or Persons during such Contract Year.

(b) No failure or refusal under this Section 8.03 shall constitute an Event of Default unless and until

(i) The Contractor shall have given prior written notice to the Municipality, describing such default in reasonable detail; and

(ii) The circumstance creating the default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Contractor) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than sixty (60) days from the date of the notice given pursuant to Subsection 8.03(c)(i)). If the Municipality shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default as long as the Municipality is continuing to take reasonable steps to correct such default. For the purposes of this Section 8.03, "reasonable steps" shall be deemed to include the initiation by the Municipality of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the Municipality in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Contractor, the Credit

Institution or other interested parties of the means by which the Event of Default may be cured.

(c) No correction of a default of the Municipality, by or on behalf of the Contractor, or reasonable steps taken by the Contractor to correct a default of the Municipality, shall cause the default of the Municipality to cease to be an Event of Default; provided, however, that the Municipality shall have the prior right and opportunity to effect any correction or cure of a default or Event of Default.

(d) Notwithstanding any other provision in this Section 8.03, if the Municipality is in default under Section 8.03(a)(v), the Municipality must cure such Event of Default within 30 days of receiving notice from the Contractor of such Event of Default. If the Municipality does not cure such Event of Default within 30 days of receiving notice, the Contractor may exercise its right to terminate this Agreement by providing notice as set forth in Section 8.04.

**8.04 NOTICE OF TERMINATION FOR DEFAULT.** If any party shall have a right of termination for cause in accordance with this Article VIII by virtue of the fact that an Event of Default exists, after all periods of grace and cure have then expired (including any cure period granted to the Credit Institution) the right of termination may be exercised by written notice of termination given to the party in default. The notice shall specify the termination date, which shall be no less than thirty (30) days from the date of such notice, except in the case of abandonment by the Contractor under Section 8.10 herein.

#### **8.05 DISPUTE RESOLUTION.**

(a) If a dispute arises from or relates to this contract or the breach thereof and if the dispute cannot be settled through discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules before resorting to arbitration. Thereafter, any unresolved controversy or claim arising from or relating to this contractor breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The AAA shall select a mediator or arbitrator, as the case may be, who shall be completely disinterested and possess relevant business experience in solid waste management.

(b) The location of any arbitration or mediation shall be in White Plains, New York. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. In addition, the arbitrators shall award interest on an award for money payable under this Agreement to the extent this Agreement provides for the payment of such interest.

(c) The Contractor and the Municipality shall, in good faith, take all reasonable measures necessary to facilitate an expeditious resolution of a dispute hereunder. To

the extent permitted by Applicable Law, if the arbitrator determines that a party has acted in bad faith in referring any dispute to arbitration, the party acting in bad faith shall pay all of the fees and expenses of the arbitrator and all attorney's fees incurred by the other party in connection with such proceedings.

(d) The Municipality agrees to consolidate any dispute it may have under this Agreement with that of any other similarly situated Municipality and to be bound by any decisions of the arbitrators with respect to such dispute.

(e) Pending final resolution of any dispute (except a dispute regarding the cause for terminating this Agreement), the parties shall continue to fulfill their respective obligations under the Agreement.

(f) Notwithstanding anything to the contrary in this Agreement, neither party shall be required to await the resolution of dispute proceedings regarding the reasons for terminating this Agreement before exercising such party's termination rights. The provisions of paragraph (g) below shall be applicable to any disputes regarding liabilities in connection with such termination.

(g) During any dispute concerning the payment of money or the set-off of amounts due under this Agreement, the amount in controversy shall not be paid or set-off (as the case may be) unless and until the dispute is resolved in favor of the party claiming entitlement to the disputed payment or right of set-off.

**8.06 SURVIVAL OF CERTAIN RIGHTS AND OBLIGATIONS.** The rights and obligations of the parties governing the ability of any party to terminate this Agreement and the manner of determining the rights of the parties with regard thereto shall survive any termination of this Agreement. No termination of this Agreement shall limit or otherwise affect the respective rights and obligations of any party accrued prior to the date of such termination, including any rights as the result of the breach of this Agreement by either party.

**8.07 RIGHT OF TERMINATION NOT EXCLUSIVE.** Any rights of termination upon an Event of Default by the Contractor or the Municipality, are not exclusive and may be exercised without prejudice to any right provided by law to any party to bring appropriate action, subject to the preemptory requirements of Section 8.05, to recover actual damages for failure in the performance by the defaulting party of its obligations pursuant to this Agreement.

**8.08 RIGHT TO CURE BY CREDIT INSTITUTION.**

(a) **Right to Cure.** If the Municipality alleges an Event of Default under this Agreement, then, provided the Contractor has provided the Municipality notice of the name and address of the Credit Institution on Schedule 1, the Municipality shall give written notice of the Event of Default to the Credit Institution at the same time that it gives written notice to the Contractor as required under Section 8.02(c)(i). The Credit Institution shall have the same right as the Contractor to arrange for the cure of the Event of Default and shall also have the right (if and when granted to the Credit Institution pursuant to the agreements between it and the Contractor) to substitute for the Contractor a responsible new operator acceptable to the Municipality (referred to herein as "Replacement Contractor"), which right the Credit Institution

may invoke upon fourteen (14) days written notice at any time during the period stipulated under Section 8.09(b) to the Municipality and the Contractor. While the Credit Institution shall be entitled to appoint a Replacement Contractor, its right to cure an Event of Default shall apply regardless of whether a Replacement Contractor is appointed. Any Replacement Contractor shall use its best efforts to effect a Successful Cure as soon as possible, but in no event shall such substitute performance by the Replacement Contractor exceed the cure period set forth in Section 8.09(b)(i).

(b) **Cure Period.** If the Credit Institution invokes its right to cure an Event of Default under Section 8.09(a), there shall be a period within which the Event or Events of Default may be cured (referred to herein as the "Cure Period"), which shall end upon the earliest of:

(i) one (1) year from the date on which the default first occurred or such longer period as is required for the delivery and start up of equipment to cure the default, but in no event longer than two years;

(ii) the date the Credit Institution gives notice to the Municipality that cure is no longer being attempted, or

(iii) the date that all Events of Default have been cured, and, in the event a Replacement Contractor has been appointed, the Replacement Contractor has assumed in writing the obligation to resume full compliance with the terms of this Agreement (herein called a "Successful Cure").

(c) **Operations During Cure Period.** During the Cure Period, neither the Replacement Contractor, if any, nor the Credit Institution shall be liable to the Municipality for damages caused by the Contractor in excess of cash available to Contractor from revenues from the operation of the Facility after payment of obligations to Credit Institutions and operating costs.

(d) **Revenues During Cure Period.** During any Cure Period, the Municipality shall pay to the Credit Institution or Replacement Contractor, if any, as instructed by the Credit Institution, all fees required by Article VI. The operator of the Facility then serving the Municipality (including either the Credit Institution or Replacement Contractor, if any) shall document and provide to the Municipality the information required by this Agreement to be furnished by the Contractor to the Municipality.

(e) **Subsequent to Cure Period.** If a Successful Cure is achieved, upon termination of the Cure Period, the Replacement Contractor, in the event a Replacement Contractor is appointed, shall be subject to all the terms and conditions of this Agreement from the end of the Cure Period to the expiration of the Agreement.

## **IX. TERM.**

9.01 **TERM.** Subject to the further provisions of this Article IX and the provisions of Article VIII, the term of this Agreement shall commence upon signature by the parties and shall remain in effect for a term of twenty (20) Contract Years from the Commencement Date (the

"Initial Term"). Following the Initial Term, this Agreement shall be automatically extended for four five-year terms (each such five-year term an "Extension Term"), unless one of the parties gives the other notice of an intent to terminate the Agreement, which notice must be provided no later than one year prior to the expiration of the Initial Term or any Extension Term.

**9.02 TERMINATION FOR FAILURE TO MEET CONDITIONS PRECEDENT.**

In the event that all conditions precedent stated in Article IV are not satisfied or waived by the December 31, 2014, this Agreement may be terminated by any party hereto upon thirty (30) days' prior written notice by such party to the other party, unless such failure to satisfy all such conditions precedent is caused by an Uncontrollable Circumstance, in which case the date stipulated above shall be extended by that number of days during which an Uncontrollable Circumstance occurred.

**X. REPRESENTATIONS AND WARRANTIES.**

**10.01 REPRESENTATIONS AND WARRANTIES OF THE MUNICIPALITY.**

As of the date of execution of this Agreement, the Municipality represents and warrants to the Contractor as follows:

(a) The Municipality is a body politic and corporate, constituting a public instrumentality and political subdivision of the State. The Municipality has agreed to implement solid waste disposal, and to provide solid waste management services to the public.

(b) The Municipality has all requisite power, authority and capacity to enter into and deliver this Agreement and related documents, to engage in the transactions contemplated hereby and to perform its obligations hereunder in accordance with the terms hereof.

(c) The execution, delivery and performance of this Agreement by the Municipality has been duly and effectively authorized by all necessary Municipality action, and the officers of the Municipality who are here undersigned have been empowered by all necessary authorizations and resolutions to execute and deliver this Agreement on its behalf.

(d) This Agreement has been duly and validly executed and delivered on behalf of the Municipality, and assuming due authorization, execution and delivery of this Agreement by the Contractor, this Agreement constitutes the valid and legally binding obligation of the Municipality, enforceable against the Municipality in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of the parties hereto generally.

(e) There is no action, proceeding or governmental investigation pending or, to the knowledge of the Municipality, threatened against the Municipality which could materially and adversely affect consummation of any of the transactions contemplated hereunder, or which could materially and adversely affect the performance of any of the obligations of the Municipality under this Agreement.

(f) The execution, delivery and performance of this Agreement by the Municipality is not in conflict with and will not result in a breach of, or constitute a default under

any provisions of any indenture, contract, agreement or other instrument to which the Municipality is a party or by which the Municipality is bound. The execution, delivery and performance of this Agreement by the Municipality will not violate any provision of law applicable to the Municipality or any order, writ, injunction, judgment or decree of any court or governmental authority by which the Municipality is bound.

(g) No further order, consent, approval, authorization of, or declaration or filing with any governmental or public body is required in order for the Municipality to execute and deliver this Agreement. No such further order, consent, approval, authorization, declaration or filing is required in order for the Municipality to perform its obligations under this Agreement.

**10.02 REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR.** As of the date of execution of this Agreement, the Contractor represents and warrants to the Municipality as follows:

(a) The Contractor is a limited liability company partnership duly organized, validly existing and in good standing under and by virtue of the laws of the State of New York, and is duly authorized to do business in and is in good standing in the State of New York. The copies of its organizational documents heretofore furnished to the Municipality are true, correct and complete copies of such documents.

(b) The Contractor has all requisite power, authority and capacity under the laws of the State of New York, and its organizational documents to enter into and deliver this Agreement and all referenced Exhibits, to engage in the transactions contemplated hereby and to perform its obligations hereunder in accordance with the terms hereof.

(c) Except as provided on Schedule 3, there is no action, proceeding or governmental investigation pending or, to the knowledge of the Contractor, threatened against the Contractor which could materially and adversely affect the design, construction, start-up, testing, or performance requirements of the Facility or which could materially and adversely affect consummation of any of the transactions contemplated hereby or which could materially and adversely affect the performance of any of the obligations of the Contractor under this Agreement.

(d) The execution, delivery and performance of this Agreement by the Contractor have been duly and effectively authorized by all necessary Contractor action.

(e) This Agreement has been duly and validly executed and delivered on behalf of the Contractor and assuming due authorization, execution and delivery of this Agreement by the Municipality, this Agreement constitutes the valid and legally binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of the parties hereto generally.

(f) The execution, delivery and performance of this Agreement by the Contractor are not in conflict with, and will not result in any breach of, or cause a default under, any of the terms of the Contractor's organizational documents, or with any provisions of any

indenture, contract, agreement or other instrument to which the Contractor is a party or by which the Contractor is bound.

(g) The execution, delivery and performance of this Agreement by the Contractor will not violate any provision of law applicable to the Contractor or any order, writ, injunction, judgment or decree of any court or governmental authority by which the Contractor is bound.

(h) No further order, consent, approval, authorization of, or declaration or filing with, any governmental or public body, is required in order for the Contractor to execute and deliver this Agreement or perform its obligations hereunder, except for the licenses, permits, and other approvals set out on Schedule 4 which the Contractor is required to obtain hereunder relating to the design, construction, start-up, testing and operation of any facility.

(i) With respect to Acceptable Waste, and provided that no notice of non-compliance has been issued by Contractor and there is no event of default hereunder, the Municipality shall pay with respect to Acceptable Waste the lower of (i) the amounts assessed pursuant to Article VI , or (ii) the per-ton tip fee, inclusive of all additional fees or surcharges charged under any other contract with the same or substantially the same terms and conditions, including the same length of term, executed by Contractor after the Effective Date with a municipality for the disposal of Acceptable Waste, other than Spot Waste, to the Facility. In addition, if after the Effective Date, provided that no notice of non-compliance has been issued by Contractor and there is no event of default hereunder, Contractor executes a contract with a municipality for the disposal of Acceptable Waste for the same or similar length of term and provides terms and conditions that are substantially more favorable to the municipality than the terms hereof, Contractor agrees to execute an amendment to this contract to incorporate such terms into this contract.

## **XI. PARTIES TO AGREEMENT.**

The Municipality and the Contractor are independent parties under this Agreement and no party is the servant, agent or employee of the other, nor are they partners or coventurers and none shall share with the others in any risk or liability which arises out of any act of commission or omission in carrying out the provisions of this Agreement or the transactions arising therefrom; provided, however, that each party shall be entitled to enforce this Agreement against the others and seek remedies available at law or in equity and each shall be responsible for its own negligence in carrying out or for breach of the provisions of this Agreement.

The rights and obligations created under this Agreement shall apply exclusively to the parties hereto and their successors and permitted assigns and no rights shall be created in any other party by reason of this Agreement or any separate act or action taken independently by any party hereto. Nothing contained in this Agreement is intended to nor shall it confer upon any person, firm or corporation not a party hereto or referred to herein or consenting hereto or being bound by any obligation hereunder, any right, or vest any cause of action in, or to authorize any

such other person to institute, join or maintain any suit or suits, claim or claims against any party hereto.

## XII. ENTIRE AGREEMENT.

This Agreement contains the entire agreement and understanding between the Municipality and the Contractor, and there are no other terms, obligations, covenants, representations, or statements or conditions, oral or otherwise, of any kind whatsoever, except as to related documents referred to herein or which are Exhibits hereto. No extension or indulgence granted by either the Municipality or the Contractor; no alteration, change or modification of this Agreement consented to or agreed to by any party; and no act or omission of any party or its agents shall constitute an amendment to, or modification of, this Agreement (nor shall same be interposed as a defense against the enforcement of any party's rights under this Agreement or give rise to an implied waiver of any rights or any equitable estoppel); rather, this Agreement may be modified or amended only by a document in writing which is duly executed by the Municipality and the Contractor. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and permitted assigns.

## XIII. NOTIFICATION.

All notices, demands or other communications permitted or required herein to be given by any party to the others shall be in writing and shall be postage prepaid, return receipt requested, or personally delivered.

In the case of the Municipality, notice to designated parties shall be sent as follows:

CITY MANAGER  
CITY OF NEWBURGH  
83 BROADWAY  
NEWBURGH, NY 12550

With a copy to:

CORPORATION COUNSEL  
CITY OF NEWBURGH  
83 BROADWAY  
NEWBURGH, NY 12550

In the case of the Contractor, notice to designated parties shall be sent as follows:

TBE-Montgomery, LLC  
Attention: James W. Taylor, Jr.  
340 Neelytown Road  
Montgomery, NY 12549

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With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be sent to such other person or persons and/or addresses as the parties may from time designate in writing to each other.

**XIV. AUDIT.**

The Contractor shall maintain during the time this Agreement is effective and retain not less than two years after completion thereof, or for such longer period as may be required by law, complete and accurate records of wastes processed by the Contractor at the Facility Site under this Agreement, and the Municipality shall have the right, at any reasonable time, to inspect and audit project records by authorized representatives of its own, or of any public accounting firm it selects. The records to be thus maintained and retained by the Contractor shall include, without limitation, accounting records of the amounts of all solid waste and hazardous waste, identified by source, delivered to the Facility Site.

**XV. AFFIRMATIVE ACTION, EMPLOYMENT POLICY.**

**15.01 AFFIRMATIVE ACTION.** The Contractor shall have an affirmative action plan at the facilities operated by it pursuant to this Agreement.

**15.02 DISCRIMINATION IN EMPLOYMENT.** The Contractor agrees that in the performance of this Agreement with the Municipality, it will not discriminate against any worker because of race, creed, color, religion, national origin, handicap or sex, in violation of any applicable federal, state and local laws and regulations.

**XVI. MISCELLANEOUS PROVISIONS.**

**16.01 MULTIPLE COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such Counterparts provided that the counterpart produced bears the signature of the party sought to be bound.

**16.02 GOVERNING LAW; INTERPRETATION.** This Agreement shall be governed, construed, interpreted and enforced, in all respects, in accord with the laws of the State of New York. Any approval, consent or affirmation required by any party under the terms of this Agreement shall not be unreasonably withheld. The parties hereto agree that each party will perform its obligations and enforce its rights hereunder in good faith. No right, benefit or obligation of the Contractor under this Agreement may be materially and adversely affected by ordinance, regulation or other legislation of the Municipality unless (a) such regulation involves

the health and safety of its residents, or (b) the economic effect of such legislation is, as part of such legislation, reflected in an amendment hereto that makes the Contractor whole.

**16.03 SEVERABILITY.** The headings used in this Agreement are solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect. Without limiting the foregoing provision, the parties agree that in the event this Agreement is determined by a court of law to be franchise, then the term of the Agreement shall be deemed to be the maximum franchise term legally permissible.

**16.04 BINDING EFFECT.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**16.05 ASSIGNMENT.**

(a) The Contractor shall have the right at any time to assign this Agreement and the Contractor's rights hereunder to an affiliated entity, including, without limitation, to a corporation whose shareholders include the Contractor, its partners or other entities affiliated with the Contractor or to a general or limited partnership whose general partners include the Contractor, its partners or other entities affiliated with the Contractor. Upon the Contractor's execution of any such assignment and delivery of notice of such assignment to the Municipality, such assignee shall be deemed to be the "Contractor" for all purposes of this Agreement. The Contractor shall also have the right to collaterally assign this Agreement to a Credit Institution. In the event of any permitted assignment, the Municipality shall certify, if required, that such assignment is permitted and accepted.

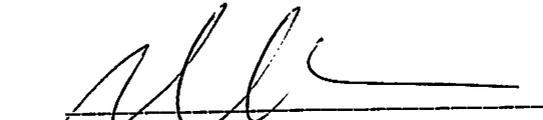
(b) Except as set forth in paragraph (a), the Contractor may not assign this Agreement without the prior written consent of the Municipality. This Agreement may not be assigned by the Municipality without the prior written consent of the Contractor. No assignment shall relieve any party of any of its obligations under any provision of this Agreement.

**16.06 FAILURE OR INDULGENCE NOT WAIVERS; CUMULATIVE REMEDIES.** Except as expressly provided herein, no failure to exercise and no delay in exercising any right, power or remedy hereunder on the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any Event of Default other than the Event of Default specified in such waiver; and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein by the waiving party. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. All the rights, powers and remedies of any party shall be cumulative and shall be in addition to any and all other rights, powers and

remedies provided at law, in equity, by statute or otherwise, except as expressly limited in this Agreement. The exercise of any right, power or remedy by any party shall not in any way constitute a cure or waiver of any Event of Default by the other parties, or prejudice such party in the exercise of any of its rights, powers or remedies.

**16.07 FURTHER ASSURANCES.** The Municipality and the Contractor each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities in excess of or in addition to those expressly provided for in this Agreement, as may be reasonably requested by the other parties to carry out the intent of this Agreement.

Approved as to form:



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MICHELLE KELSON  
Corporation Counsel



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CHERYL A. GROSS  
Comptroller

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year set forth below.

City of Newburgh, NY

Richard F Herbek

By: Richard F Herbek

Name: Acting City Manager  
Title:

TBE-Montgomery, LLC

By: James W. Taylor, Jr.

Title: President

DATE: July 22, 2011

## **SCHEDULE 1**

### **CREDIT INSTITUTION**

1. For purposes of Sections 8.02 and 8.08 of this Agreement, the name and address of the Credit Institution is:

[TBA by Contractor]

2. Contractor may change the Credit Institution identified in 1, above, and must provide a revised Schedule 1 to the Municipality within seven (7) Calendar Days of the change.

**SCHEDULE 2**  
**WASTE DISPOSAL OPERATIONS**

1. The hours of operation of the Facility and the Facility Site shall be Monday through Friday from 7 A.M. until 4:30 P.M. and Saturday from 7 A.M. until 12 P.M.

### **SCHEDULE 3**

#### **PENDING ACTIONS, PROCEEDINGS OR GOVERNMENTAL INVESTIGATIONS**

With respect to Section 10.02(c)

- 1) Statement of Findings and Decision issued pursuant to 6 NYCRR 617.11(a) of the New York State Environmental Quality Review Act (SEQRA) by the Town Board of the Town of Montgomery as Lead Agency for SEQRA, dated November 22, 2010 (litigation pending).
- 2) Amendment to Town of Montgomery Code to rezone 13.3 acres within the Project Site and to create a Biomass Gasification-To-Energy Floating Zone on 95 acre Project Site, dated November 22, 2010 (litigation pending).
- 3) Biomass Gasification-to-Energy Special Use Permit issued by the Town Board of the Town of Montgomery, dated December 2, 2010 (litigation pending).
- 4) Master Site Plan (Phase I) Approval, issued by Town of Montgomery Town Board, dated December 2, 2010 (litigation pending).
- 5) Permit for Solid Waste Management Facility issued pursuant to 6 NYCRR Part 360 by the New York State Department of Environmental Conservation, dated December 3, 2010 (litigation pending)

## SCHEDULE 4

### LICENSES, PERMIT AND OTHER APPROVALS

With respect to Section 10.02(h), the following are the licenses, permits and other approvals which the Contractor is required to obtain relating to the design, construction, start-up, testing and operation of the Facility.

#### A. Licenses, Permits and Approvals That Have Been Obtained

1. Statement of Findings and Decision issued pursuant to 6 NYCRR 617.11(a) of the New York State Environmental Quality Review Act (SEQRA) by the Town Board of the Town of Montgomery as Lead Agency for SEQRA, dated November 22, 2010 (litigation pending).
2. Amendment to Town of Montgomery Code to rezone 13.3 acres within the Project Site and to create a Biomass Gasification-To-Energy Floating Zone on 95 acre Project Site, dated November 22, 2010 (litigation pending).
3. Referral and recommendation on Zoning Amendment pursuant to N.Y. General Municipal Law § 239-m by the Orange County Planning Department, dated November 22, 2010.
4. Biomass Gasification-to-Energy Special Use Permit issued by the Town Board of the Town of Montgomery, dated December 2, 2010 (litigation pending).
5. Master Site Plan (Phase I) Approval, issued by Town of Montgomery Town Board, dated December 2, 2010 (litigation pending).
6. Stormwater Pollution Prevention Program Approval issued by the Town of Montgomery, dated December 6, 2010.
7. Referral and recommendation on Applications for Biomass Gasification-to-Energy Special Use Permit and Master Site Plan (Phase I) Approval, made pursuant to N.Y. General Municipal Law § 239-m by the Orange County Planning Department, dated November 29, 2010.
8. Statement of Findings and Decision issued pursuant to 6 NYCRR 617.11(a) of SEQRA by the New York State Department of Environmental Conservation as an Involved Agency for SEQRA, dated December 3, 2010.
9. Amended Statement of Findings and Decision issued pursuant to 6 NYCRR 617.11(a) of SEQRA by the New York State Department of Environmental Conservation as an Involved Agency for SEQRA, dated December 7, 2010.

10. Permit for Solid Waste Management Facility issued pursuant to 6 NYCRR Part 360 by the New York State Department of Environmental Conservation, dated December 3, 2010 (litigation pending)
11. Notice of Intent for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-0-10-001) issued by New York State Department of Environmental Conservation, dated December 6, 2010.
12. Notice of Intent for coverage under the SPDES Multi-Sector General Permit Associated with Industrial Activity (Permit No. GP-0-06-002) issued by New York State Department of Environmental Conservation, dated October 26, 2010.
13. State Air Facility Permit issued pursuant to 6 NYCRR Part 201 by the New York State Department of Environmental Conservation, dated December 3, 2010.
14. Chemical Bulk Storage Certificate (Permit No. 3-000480) issued pursuant to 6 NYCRR Part 596 by the New York State Department of Environmental Conservation, dated January 1, 2011.
15. Petroleum Bulk Storage Certificate (Permit No. No. 3-600142) issued pursuant to 6 NYCRR 612 by the New York State Department of Environmental Conservation, dated October 3, 2007.
16. Nationwide Permits No. 39 issued by the Department of the Army for Application No. 2010-00691, dated October 19, 2010.
17. Water Quality Certification issued by the New York State Department of Environmental Conservation pursuant to Section 401 of the Clean Water Act, dated October 22, 2010.
18. Opinion Letter – No Impact to Cultural Resources issued by New York State Office of Parks, Recreation and Historic Preservation issued pursuant to Section 14.09 of the New York Parks, Recreation and Historic Preservation Law, dated June 15, 2010.
19. Notice of Proposed Construction or Alteration under 49 USC 44718 and Title 14 of the Code of Federal Regulations, Part 77, provided to the Federal Aviation Administration, dated March 29, 2011.
20. Building permit for site work and foundations

**B. Licenses, Permits and Approvals Not Yet Obtained**

1. Approval of water supply and proposed modifications to existing subsurface wastewater treatment system to be issued by the Orange County Department of Health.
2. Title V Air Operating Permit to be issued by the New York State Department of Environmental Conservation within one year of the commencement of operation.
3. Site Plan (Phase II-IV) Approval to be issued by Town of Montgomery Town Board. The Master Site Plan (Phase I) Approval, issued by Town of Montgomery Town Board, dated December 2, 2010 allows certain construction to commence while the Project Company completes detailed engineering design for the remaining phases of construction. Construction of the later phases will require Town Board approval over the design. Application for the approvals will be submitted as the information becomes available.
4. Registration for a SPDES General Permit for Wastewater Discharge (Permit No. GP-0-05-001), issued by New York State Department of Environmental Conservation for a subsurface sanitary discharge to be filed prior to commencement of operation.
5. Building permits for remainder of construction.
6. The Part 360 Permit requires during the period of construction and prior to operation the submission of additional engineering design plans and details regarding methods of operation.

RESOLUTION NO.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN  
AS 162 BROADWAY (SECTION 30, BLOCK 2, LOT 29)  
AT PRIVATE SALE TO JING HAD LIANG AND WEI RONG LOU  
FOR THE AMOUNT OF \$70,000.00

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

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

WHEREAS, the City of Newburgh desires to sell 162 Broadway, being more accurately described as Section 30, Block 2, Lot 29 on the official tax map of the City of Newburgh; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before March 27, 2015, being sixty (60) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
162 Broadway	30 - 2 - 29	Jing Han Liang and Wei Rong Lou	\$70,000.00

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

# Terms and Conditions Sale

## 162 Broadway, City of Newburgh (30-2-29)

### 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 rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property

located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.

9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before March 27, 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.: \_\_\_\_\_- 2015

OF

JANUARY 26, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 36  
CARTER STREET (SECTION 22, BLOCK 2, LOT 27)  
AT PRIVATE SALE TO MARINA TSESARSKYA FOR THE AMOUNT OF \$15,000.00

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

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

WHEREAS, the City of Newburgh desires to sell 36 Carter Street, being more accurately described as Section 22, Block 2, Lot 27 on the official tax map of the City of Newburgh; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before March 27, 2015, being sixty (60) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
36 Carter Street	22 - 2 - 27	Marina Tsesarskya	\$15,000.00

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

# Terms and Conditions Sale

## 36 Carter Street, City of Newburgh (22-2-27)

### 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 rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. 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.
7. 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.
8. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be

responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.

9. 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 March 27, 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.
10. 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.
11. 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.
12. 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.**
13. 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.
14. 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.
15. Evictions, if necessary, are solely the responsibility of the successful bidder after closing and recording of the deed.
16. 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.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

**A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN AS 151 LANDER STREET (SECTION 18, BLOCK 4, LOT 43), 153 LANDER STREET (SECTION 18, BLOCK 4, LOT 44.1) AND 153 LANDER STREET REAR (SECTION 18, BLOCK 4, LOT 44.2) AT PRIVATE SALE TO ANA VEGA OVALLE FOR THE AMOUNT OF \$22,000.00**

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

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

**WHEREAS**, the City of Newburgh desires to sell 151 Lander Street, 153 Lander Street and 153 Lander Street Rear, being more accurately described as Section 18, Block 4, Lots 43, 44.1 and 44.2 on the official tax map of the City of Newburgh; and

**WHEREAS**, the prospective buyer has offered to purchase these properties at private sale; and

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

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before March 27, 2015, being sixty (60) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
151 Lander Street	18 - 4 - 43	Ana Vega Ovalle	\$22,000.00
153 Lander Street	18 - 4 - 44.1		
153 Lander Street Rear	18 - 4 - 44.2		

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

**Terms and Conditions Sale**  
**151 Lander Street, City of Newburgh (18-4-43)**  
**153 Lander Street, City of Newburgh (18-4-44.1)**  
**153 Lander Street, City of Newburgh (18-4-44.2)**

**STANDARD TERMS:**

1. City of Newburgh acquired title to these properties 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 properties are 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 properties 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 rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed

by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.

8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.
9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before March 27, 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.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

A RESOLUTION TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY KNOWN  
AS 374 LIBERTY STREET (SECTION 10, BLOCK 1, LOT 31)  
AT PRIVATE SALE TO NIGEL OSBORNE AND JANELLE OSBORNE  
FOR THE AMOUNT OF \$16,500.00

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

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

WHEREAS, the City of Newburgh desires to sell 374 Liberty Street, being more accurately described as Section 10, Block 1, Lot 31 on the official tax map of the City of Newburgh; and

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of the following property to the indicated purchaser be and hereby is confirmed and the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the indicated purchase price in money order, good certified or bank check, made payable to **THE CITY OF NEWBURGH**, such sums are to be paid on or before March 27, 2015, being sixty (60) days from the date of this resolution; and

<u>Property address</u>	<u>Section, Block, Lot</u>	<u>Purchaser</u>	<u>Purchase Price</u>
374 Liberty Street	10 - 1 - 31	Nigel and Janelle Osborne	\$16,500.00

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

# Terms and Conditions Sale

## 374 Liberty Street, City of Newburgh (10-1-31)

### 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 rehabilitate any building on the property and bring it into compliance with all State, County and Local standards for occupancy within (18) months of the date of the deed. Within such eighteen (18) month time period the purchaser must either: obtain a Certificate of Occupancy for all buildings on the property; make all buildings granted a Certificate of Occupancy before the date of purchase fit for the use stated in such Certificate of Occupancy; or demolish such buildings. The deed shall require the purchaser to schedule an inspection by City officials at or before the end of the eighteen (18) month period. If the purchaser has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy or Certificate of Compliance by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy or Certificate of Compliance is issued. A written request made to the City Manager for an extension of the eighteen (18) month rehabilitation period shall be accompanied by a non-refundable fee of \$250.00 per parcel for which a request is submitted. The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to rehabilitate of up to, but not to exceed, three (3) months. Any additional request thereafter shall be made in writing and placed before the City Council for their consideration.
6. Notice is hereby given that the property lies within the East End Historic District as designated upon the zoning or tax map. This parcel is being sold subject to all provision of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcel so designated in accordance with same.
7. All purchasers are advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the successful purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property

located on any parcel sold shall be the sole responsibility of the successful purchaser following the closing of sale.

9. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Property may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Property also may contain other environmental hazards. Purchaser shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchaser shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receivership of the pamphlet entitled "Protecting Your Family from Lead in Your Home." Purchaser also acknowledges that he/she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
10. The entire purchase price and all closing costs/fees must be paid by money order or guaranteed funds to the City of Newburgh Comptroller's Office on or before March 27, 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.: \_\_\_\_\_-2015

OF

JANUARY 26, 2015

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY  
FROM A DEED ISSUED TO JEFFRY NORMIL  
TO THE PREMISES KNOWN AS 6-12 WILLIAM STREET AND 192 ANN STREET  
(SECTION 35, BLOCK 2, LOT 25)**

**WHEREAS**, on June 17, 2011, the City of Newburgh conveyed property located at 6-12 William Street and 192 Ann Street f/k/a 8, 10-14 William Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 35, Block 2, Lot 25, to Jeffrey Normil; and

**WHEREAS**, by Resolution No.: 226-2012 of December 10, 2012 the City of Newburgh authorized the conveyance of said property from Jeffrey Normil to Prince William Properties LLC with an extension of time in order to comply with the deed covenants; and

**WHEREAS**, Prince William Properties LLC, by their property manager, has requested a release of the restrictive covenants contained in said deed; and

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

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

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

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 6-12 William Street and 192 Ann Street f/k/a 8, 10-14 William Street, Section 35, Block 2, Lot 25 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 June 17, 2011, from THE CITY OF NEWBURGH to JEFFRY NORMIL, recorded in the Orange County Clerk's Office on July 5, 2011 in Liber 13195 of Deeds at Page 1389 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  
Pursuant to 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.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN  
THE CITY OF NEWBURGH AND PUBLICSECTOR HR CONSULTANTS, LLC  
FOR PROFESSIONAL HUMAN RESOURCES SERVICES**

**WHEREAS**, the City of Newburgh wishes to enter into the attached agreement with PublicSector HR Consultants LCC; and

**WHEREAS**, the agreement provides assistance and guidance in the review of the City's human resources policies and procedures in the form of consulting services; and

**WHEREAS**, the cost for these services is \$7,500.00 and shall be derived from A.1315.0455 - Consultant Services; and

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

**NOW, THEREFORE BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the agreement with PublicSector HR Consultants LLC, in substantially the same form as annexed hereto with any other provision that Counsel may require, at a cost \$7,500.00 for consulting services in the review of the City's human resources policies and procedures.

# CITY OF NEWBURGH

## HUMAN RESOURCE ANALYSIS

### *PROFESSIONAL SERVICES AGREEMENT*



*Public Sector HR Consultants LLC  
14 Knollwood Drive  
Glenville, New York 12302  
Telephone: 518.399.4512  
Fax: 518.384.1963*

# CITY OF NEWBURGH PROFESSIONAL SERVICES AGREEMENT

## PARTIES TO AGREEMENT

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This Professional Services Agreement is made by and between the *City of Newburgh* (herein referred to as the Client) and *Public Sector HR Consultants LLC* (herein referred to as PSHRC), with its principal offices located at 14 Knollwood Drive, Glenville, New York, 12302.

PSHRC provides a comprehensive human resource management consulting service. PSHRC does not represent that it is in the practice of law, but provides administrative and consulting services to effectively manage the Client's human resource needs. In the event the Client requests that its legal counsel participate in any aspect of PSHRC's human resource management services, PSHRC will consult with the Client's legal counsel as directed by the Client. The Client understands and agrees that PSHRC's role is limited to an advisory capacity and that the application and implementation of the information and services provided by PSHRC are the total responsibility of the Client. Furthermore, Client understands that neither PSHRC nor any other party can determine with certainty how an appropriate government agency or other trier of fact may apply the law with regard to a specific factual situation. As a result of such, Client acknowledges that PSHRC shall not be responsible to Client as a result of a determination made by a government agency and/or trier of fact absent gross negligence or willful misconduct of PSHRC, in which case damages shall be limited to consideration paid to PSHRC.

PSHRC will conduct a comprehensive **Human Resource Analysis** for the **City of Newburgh**. The specific professional services to be provided by PSHRC will include:

1. Conduct an on-site analysis of the City's current human resource management practices. The scope of work for the analysis will include a review of internal policies, procedures and practices; a review of personnel recordkeeping and tracking systems; and on-site interviews with designated management and/or administrative staff regarding the effectiveness of the current human resource function. The areas of focus will include:
  - a. Human Resource Administration  
Organization of HR function or department; documentation of processes, operating standards, and internal controls; how the City remains current and up to date with the HR field and applicable federal and state regulations; and techniques for communicating with employees and appointing authorities.
  - b. Recruitment, Interviewing and Hiring  
Recruitment methods, methods used in workforce and succession planning, and use of turnover information; adherence to civil service regulations; access to and quality of job postings and advertisements; and referrals and interviewing practices.

c. Job Evaluation

Standards and processes for reviewing and updating job descriptions, including essential job functions and Fair Labor Standards Act (FLSA) classification; and standards, internal controls, and processes for communicating job description changes to the county civil service department.

d. Compensation Management

Standards and processes used to develop and communicate internal compensation policy and plans; internal controls to ensure accuracy and consistency of pay and leave; policies on pay adjustments, pay differentials, overtime pay, and premium pay; leave of absence management standards, internal controls, and practices; confidentiality policies and agreements with those handling health-related information; Family and Medical Leave Act (FLMA) compliance including designation and notification; and leave sharing plans.

e. Employee Benefits

Standards and processes for enrollment of new employees in benefit plans; communication methods for open enrollment; workers' compensation and disability reporting and claims management; unemployment insurance claims management; and compliance with COBRA / HIPAA requirements.

f. Performance Management

Standards and processes used to assess employee performance, including methods of communication to new and current employees and scope of supervisory training.

g. Employment Separation

Standards and processes for employment separations; notification of cancellation of employee benefits; and internal controls and review processes for involuntary terminations.

h. Training and Development

Orientation program for new employees and supervisors; training programs and delivery methods including courses, training staff, and cost; and workforce development policies including drug-free workplace, workforce violence and sexual harassment prevention, diversity, FMLA and FLSA responsibilities.

i. Employee Relations

Number, type, and outcome of appeals and grievances; internal grievance processes; other forms of alternative dispute resolution used; communication methods and forms; and number, type, and outcome of corrective and disciplinary actions.

j. Personnel Records Management

Content of employee, payroll, and medical files; internal controls to ensure accuracy and control access; compliance with INS Form I-9 employment eligibility verification; process for purging records; review of payroll procedures and compliance with wage and hour regulations; and posting of required posters and notices.

2. Compile the data and prepare a written report of the review, which shall include any potential compliance issues discovered and recommendations for prioritizing future human resource initiatives.
3. Meet with City officials and/or designated management staff to present the findings of the report.

### **Fee for Services**

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- **Human Resource Analysis** – The fee to conduct the Human Resource Analysis for the City of Newburgh will be \$7,500.
- **Travel Expenses** – The City of Newburgh will be responsible for reimbursing PSHRC for any travel expenses (limited to mileage and tolls) directly related to providing services detailed in this proposal. The mileage rate that will be charged shall be the IRS mileage rate in effect at the time of travel.

### **Terms of Payment**

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Forty percent (40%) (\$3,000) billable upon execution of this agreement; forty percent (40%) (\$3,000) billable upon delivery of the Human Resource Analysis Report; twenty percent (20%) (\$1,500) billable thirty days following delivery of the Human Resource Analysis Report. Invoices will be due upon receipt.

### **Signatures of Parties**

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IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement through their respective representatives:

#### **City of Newburgh**

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

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

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

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

#### **Public Sector HR Consultants LLC**

*Signature:* Ronni M. Travers

*Date:* January 5, 2015

*By:* Ronni M. Travers

*Title:* President

RESOLUTION NO.: \_\_\_\_\_-2015

OF

JANUARY 26, 2015

A RESOLUTION APPROVING THE CONSENT JUDGMENT AND AUTHORIZING THE CITY MANAGER TO SIGN SUCH CONSENT JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDINGS AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NOS. 7726-2009, 7476-2010, 6703-2011, 5660-2012 and 6047-2013 INVOLVING SECTION 29, BLOCK 2, LOTS 5 and 6 (TDR FUNDING CORP.)

WHEREAS, TDR Funding Corp. has commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 tax assessment years bearing Orange County Index Nos. 7726-2009, 7476-2010, 6703-2011, 5660-2012 and 6047-2013; and

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

WHEREAS, TDR Funding Corp. is willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 29-2-5 be reduced to a market value of \$156,000.
- 2- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 29-2-6 be reduced to a market value of \$150,000.
- 3- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 29-2-5 be reduced to a market value of \$150,000.
- 4- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 29-2-6 be reduced to a market value of \$145,000.
- 5- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 29-2-5 be reduced to a market value of \$138,000.
- 6- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 29-2-6 be reduced to a market value of \$135,000.
- 7- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 29-2-5 be reduced to a market value of \$141,030.

- 8- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 29-2-6 be reduced to a market value of \$121,200.
- 9- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 29-2-5 be reduced to a market value of \$124,200.
- 10- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 29-2-6 be reduced to a market value of \$106,650.

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

**BE IT FURTHER RESOLVED**, that Michael G. Ciaravino, City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; and Richard B. Golden, Esq. on behalf of Burke, Miele & Golden, LLP, as Special Counsel, be and they hereby are designated as the persons for the City who shall apply for such approval pursuant to the aforesaid laws.

SUPREME COURT – STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
In the Matter of the Application of  
TDR FUNDING CORP.,

Petitioner,

- against -

**CONSENT JUDGMENT**

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

Respondents.

**Index No.     2009-7726**  
**2010-7476**  
**2011-6703**  
**2012-5660**  
**2013-6047**

For a Review under Article 7 of the Real Property Tax Law.  
-----X

**PRESENT: HON. CATHERINE M. BARTLETT**

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

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax roll  
for the 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 tax years, as follows:

Tax Map No. 29-2-5

be reduced prior to the application of any real property tax exemptions, if any, as follows:

Tax Year	Original Assessment	Reduction	Revised Assessment
2009-2010	\$ 215,500.00	\$ 59,500.00	\$ 156,000.00
2010-2011	\$ 186,400.00	\$ 36,400.00	\$ 150,000.00
2011-2012	\$ 156,700.00	\$ 18,700.00	\$ 138,000.00
2012-2013	\$ 156,700.00	\$ 15,670.00	\$ 141,030.00
2013-2014	\$ 138,000.00	\$ 13,800.00	\$ 124,200.00

and it is further,

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax roll  
for the 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 tax years, as follows:

Tax Map No. 29-2-6

be reduced prior to the application of any real property tax exemptions, if any, as follows:

Tax Year	Original Assessment	Reduction	Revised Assessment
2009-2010	\$ 226,300.00	\$ 76,300.00	\$ 150,000.00
2010-2011	\$ 180,800.00	\$ 35,800.00	\$ 145,000.00
2011-2012	\$ 163,100.00	\$ 28,100.00	\$ 135,000.00
2012-2013	\$ 134,700.00	\$ 13,500.00	\$ 121,200.00
2013-2014	\$ 118,500.00	\$ 11,850.00	\$ 106,650.00

**ORDERED**, that the Petitioner's real property taxes on said parcels above described for the 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 School, County and City taxes be adjusted accordingly and that any overpayment by Petitioner be refunded upon the entering of this Consent Judgment with the Orange County Clerk's Office; and it is further,

**ORDERED**, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and records and upon the assessment roll of said City the entries, changes and corrections necessary to conform such reduced market values; and it is further,

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

**ORDERED**, that there shall be audited, allowed and credited to the Petitioner, the amounts, if any, paid as County taxes and County Special District taxes against the original assessments in excess of what said taxes would have been in if the market values had been determined as herein, with the City of Newburgh and County of Orange to determine the amount and method of payment as appropriate; and it is further,

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

**ORDERED**, that all tax refunds hereinabove directed to be made by Respondents and/or any of the various taxing authorities be made by check or draft payable to the order of CRONIN & CRONIN LAW FIRM, PLLC, as attorneys for the Petitioner; and it is further,

**ORDERED**, that there shall be no interest paid or credited in connection with this Consent Judgment provided any refund due is made within sixty (60) days of the service of notice of entry of this Consent Judgment; and it is further,

**ORDERED**, If payment is not made within sixty (60) days after the service of a certified copy of this Order upon the Respondents and/or any of the various taxing authorities, then statutory interest will be paid on the amount of any refund, from the date of payment of taxes as provided by Section 726 of the Real Property Tax Law, and upon the service of a certified copy of an Order upon the Respondents and/or any of the various taxing authorities, and it is further,

**ORDERED AND DIRECTED** that upon compliance with the terms of this Order, the above captioned proceedings be, and the same hereby are discontinued without costs to either party as against the other.

Signed:            January \_\_\_\_, 2015  
                          Goshen, New York

**ENTER:**

\_\_\_\_\_  
HON. CATHERINE M. BARTLETT  
SUPREME COURT JUSTICE

**ON CONSENT:**

---

Michael G. Ciaravino  
City Manager

Dated:

Per Resolution No.: \_\_\_\_\_ - 2015

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SEAN CRONIN, ESQ.

Cronin & Cronin Law Firm, PLLC

Attorneys for the Petitioner

Dated:

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HON. JOANNE MAJEWSKI

Assessor

Dated:

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RICHARD B. GOLDEN, ESQ.

Burke, Miele & Golden, LLP

Attorney for Respondents

Dated:

RESOLUTION NO.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT \$100,000.00 FROM THE NEWBURGH ENLARGED CITY SCHOOL DISTRICT TO FUND THE SALARY AND BENEFITS OF ONE POLICE OFFICER TO BE HIRED TO BACKFILL POLICE DEPARTMENT PERSONNEL CURRENTLY SERVING IN THE CITY'S SECONDARY SCHOOL AS A COMMUNITY RESOURCE OFFICER**

**WHEREAS**, the City of Newburgh and the Board of Education of the Newburgh Enlarged City School District ("NECSD") have agreed to establish the position of Community Resource Officer ("CRO") to be filled by a police officer from the City of Newburgh Police Department at Newburgh Free Academy; and

**WHEREAS**, the NECSD has offered to reimburse the City for this CRO at the rate of \$100,000.00 so as to continue to have the CRO stationed at Newburgh Free Academy within the City of Newburgh; and

**WHEREAS**, this Council has determined that accepting such funds 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 funds from the NECSD in the amount of \$100,000.00 Dollars for the assignment of a City of Newburgh Police Officer as CRO in the NECSD.

RESOLUTION NO.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE AN AMENDMENT TO AN AGREEMENT BETWEEN  
THE CITY OF NEWBURGH AND MESH REALTY GROUP, INC.  
TO PROVIDE FOR THE CONTINUATION OF RESIDENTIAL PROPERTY  
MANAGEMENT SERVICES**

**WHEREAS**, the City Council, by Resolution No.: 27-2013 of January 28, 2013, authorized the execution of an agreement with MESH Realty Group, Inc. for residential property management services; and

**WHEREAS**, the City Council, by Resolution No.: 18-2014 of January 27, 2014 authorized an amendment to the agreement with MESH Realty Group, Inc. which provided for the continuation of residential property services; and

**WHEREAS**, such agreement expired on December 31, 2014; and

**WHEREAS**, the City of Newburgh wishes to continue with property management services; and

**WHEREAS**, it is appropriate and necessary to execute the attached Amendment to the agreement to provide for a one (1) year extension of services retroactively from January 1, 2015 to December 31, 2015; and

**WHEREAS**, such Amendment is subject to the same terms and conditions of the April 1, 2013 agreement with the exception of a One (\$1.00) Dollar increase in labor costs as provided for in Paragraph 2e of the original agreement; and

**WHEREAS**, this Council has examined such Amendment and has determined that entering into the same 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 is hereby authorized to execute the attached Amendment to an agreement between the City of Newburgh and MESH Realty Group, Inc. to provide for the continuation of residential property services.

**AGREEMENT BY AND BETWEEN**  
**THE CITY OF NEWBURGH, NEW YORK**  
**AND**  
**MESH REALTY GROUP, INC.**  
**DATED: \_\_\_\_\_**

This Addendum to the Agreement dated April 1, 2013 is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between MESH Realty Group, Inc. (AGENT), a New York corporation having its principal place of business at 77-79 Broadway, Newburgh, New York and the City of Newburgh, New York (OWNER), a municipal corporation with offices at 83 Broadway, Newburgh, New York 12550:

In consideration of the mutual covenants set forth below, agent and owner agree as follows:

1. APPOINTMENT OF AGENT

Owner hereby appoints agent as the exclusive representative of owner to manage and operate various properties located in the City of Newburgh, County of Orange, and State of New York. A list of these properties is attached to this Agreement in a Schedule "A," and may be amended from time to time.

2. Paragraph 2e of the Agreement dated April 1, 2013 is hereby amended as follows:

2e Expenses. From rental proceeds, agent shall (1) pay for advertising, (2) pay all utility and customary bills, (3) pay salaries of persons employed on the premises, including but not limited to resident managers and assistants clerks and maintenance personnel, (4) purchase supplies, and (5) cause to be made and pay for such maintenance, repairs and alterations as may be required for proper operation of the properties. The maintenance and repairs shall be billed at the rate of **\$36.00** per hour. Repairs greater than \$1,000.00 require permission of owner. Further major repairs will first be offered to the Department of Public Works to perform on behalf of the City. If unavailable to do such repairs, the work will be done by contractors hired by Mesh Realty Group, Inc.

3. TERM AND TERMINATION

The term of this agreement shall commence on the 1<sup>st</sup> day of January, 2015 and shall end on the 31<sup>st</sup> day of December, 2015, unless sooner terminated by either party. Termination may be effected at any time by either party on thirty (30) days prior written notice.

4. This Addendum, together with the April 1, 2013 Agreement contains the entire agreement between the parties as to subject matter herein and supersedes all prior agreements whether oral or written between the parties hereto. This Agreement may be modified only by a written instrument signed by the parties.

Accepted by:

MESH REALTY GROUP, INC.

CITY OF NEWBURGH, NY

\_\_\_\_\_  
Name: Rick Milton

Title: Vice President

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: Michael G. Ciaravino

Title: City Manager

Date: \_\_\_\_\_

Pursuant to Resolution No.: \_\_\_\_ - 2015

## SCHEDULE "A"

1. 162 Broadway
2. 205 Broadway
3. 266 Carpenter Avenue
4. 66 Carson Avenue
5. 95 Carson Avenue
6. 34 Carter Street
7. 36 Carter Street
8. 35 Concord Street
9. 100 Courtney Avenue
10. 55 Farrington Street
11. 246 First Street
12. 63 Grove Street
13. 72 Hasbrouck Street
14. 81 Henry Avenue
15. 44 Johnes Street - 58-1-1.-10
16. 44 Johnes Street - 58-1-1.-21
17. 25 Johnston Street
18. 64 Johnston Street
19. 112 Johnston Street
20. 120 Johnston Street
21. 34 Lander Street
22. 8 Larter Street
23. 61 Liberty Street, W.H.
24. 279 Liberty Street
25. 16 Lutheran Street
26. 119 Montgomery Street
27. 164 N. Miller Street
28. 15 ½ Overlook Place
29. 170 Renwick Street
30. 182 Renwick Street
31. 184 Renwick Street
32. 7 Richman Avenue
33. 143 Washington Street
34. 126 William Street

Revised 1/16/2015

RESOLUTION NO.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL AND ENTER INTO AN AGREEMENT  
WITH ARCADIS OF NEW YORK INC. FOR PROFESSIONAL SERVICES  
TO PREPARE AN ADDENDUM TO THE PHASE I LONG TERM CONTROL PLAN  
FOR THE CITY'S COMBINED SEWER COLLECTION SYSTEM  
IN CONNECTION WITH SPDES PERMIT NY NO. 0026310  
ISSUED BY THE NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
FOR AN AMOUNT NOT TO EXCEED \$82,950.00**

**WHEREAS**, by Resolution No. 219-2011 of October 24, 2011, the City Council authorized the City Manager to enter into an, Order on Consent to settle an enforcement action by the New York State Department of Environmental Conservation (DEC) for failure to develop a Phase I Long Term Control Plan ("LTCP") for the City's Combined Sewer Collection System in connection with the SPDES permit NY No. 0026310 for the operation; and

**WHEREAS**, by Resolution No. 173-2011 of September 12, 2011, the City Council authorized the City Manager to execute a contract with Arcadis/Malcolm Pirnie, Inc. to prepare and develop an LTCP for the City's WWTP; and

**WHEREAS**, Arcadis of New York Inc. ("ARCADIS") prepared the LTCP and submitted it to the DEC in January 2013;

**WHEREAS**, the DEC developed seven comments which generally focused on the schedule sequencing and duration, receiving body water quality and post construction monitoring program development; and

**WHEREAS**, some of the tasks were successfully reduced from the scope of work by Arcadis however the DEC is now requesting additional scope items; and

**WHEREAS**, Arcadis has submitted a letter proposal to respond to the additional scope items requested by the DEC and submit a final LTCP Addendum by March 1, 2015 for an amount not to exceed \$82,950.00; and

**WHEREAS**, funding for such project shall be derived from HG1.8120.0400.8021.2010;  
and

**WHEREAS**, this Council determines accepting the letter agreement and executing a contract with Arcadis 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 the letter proposal and execute an agreement with Arcadis for professional services to prepare an addendum to the Phase I Long Term Control Plan for the City's Combined Sewer Collection System in connection with SPDES Permit NY No. 0026310 Issued by the NYS Department of Environmental Conservation with other provisions as Corporation Counsel may require, in an amount not to exceed \$82,950.00.

Mr. Jason Morris, P.E.  
City Engineer  
83 Broadway  
Newburgh, New York 12550

ARCADIS of New York Inc.  
855 Route 146  
Suite 210  
Clifton Park  
New York 12065  
Tel 518 250 7300  
Fax 518 250 7301  
[www.arcadis-us.com](http://www.arcadis-us.com)

Subject:  
Combined Sewer System Long Term Control Plan  
Proposal to Respond to NYS DEC Comments

Water

Dear Mr. Morris:

ARCADIS of New York, Inc. (ARCADIS) is pleased to provide the City of Newburgh with this letter proposal to respond to comments developed by the New York State Department of Environmental Conservation (NYS DEC). ARCADIS has reviewed the correspondence dated December 5, 2014 to City Manager Michael Caravino from the NYS DEC. Seven comments were developed in response to the LTCP that was submitted in January 2013.

Date:  
January 6, 2015

Contact:  
Robert Ostapczuk

Phone:  
518.250.7300

These comments were generally focused on the schedule sequencing and duration, receiving body water quality and post construction monitoring program development. Some of these tasks were successfully reduced from the scope of work by ARCADIS in negotiating with the NYS DEC in 2012; however, due to personnel changes with the Department these scope items are now being requested. NYS DEC's complete list of comments is as follows:

Email:  
robert.ostapczuk  
@arcadis-us.com

Our ref:  
66004883.0000

1. *Optimize scheduling of projects to implement disinfection of additional captured flows as soon as practical. The LTCP needs to show the capability to treat excess flow when improvements/interceptor(s) commence operation.*
2. *Expedite foundation improvements (sewer separation and capacity improvements).*
3. *Green Infrastructure shall be implemented as soon as zoning/planning changes completed.*
4. *Analyze a reduced timeline to reduce contingency funding additional costs (presently a 40% contingency is included because of the 17+ year proposed construction schedule).*
5. *Return Hudson River in vicinity of CSO Outfalls to swimmable/fishable as soon as possible after each rain event and institute a sewage spill notification system.*

Imagine the result

6. *Specify a full Post Construction Monitoring Program to prove effectiveness of the LTCP.*
7. *Address diversion manholes located in the City's system that are not on telemetry and not considered regulators. The plan should consider telemetry to maximize capture/treatment.*

In follow up telephone discussions with the NYS DEC, the optimized schedule is a 15 year schedule and increasing the project schedule upfront to maximize the reduction of untreated overflows to the Hudson River. By reducing the contingency on the overall LTCP, this will positively impact our calculations to rates and the percentage of the Median Household Income (MHI) dedicated to wastewater services. The United State Environmental Protection Agency (US EPA) defines wastewater services as affordable that are at, or below, 2% of the MHI for a community. The current program with a 40% contingency and 17 year project schedule caps the impact to the MHI at 2.5% which is already above the US EPA guidance for affordability. In order to balance the request by the NYS DEC in meeting the 15 year schedule, maximizing the upfront LTCP benefits and maintaining an affordable program ARCADIS has developed the following scope of services for the City's consideration:

### **Scope of Services**

#### ***Task 1 Project Management***

ARCADIS will prepare monthly invoices for the project. ARCADIS will prepare meeting minutes and distribute minutes of the meetings to the City of Newburgh.

#### ***Task 2 Develop Cost and Schedule Scenarios***

ARCADIS will revise the cost estimate based on 2015 dollars and include two sewer separation projects (South Water Street and Liberty and Grand Street Projects). ARCADIS will vary the project contingency to 40%, 30% and 25% for three different cost scenarios to assess the sensitivity to the project. ARCADIS previously developed a scenario that removed High Rate Treatment (HRT) and included only disinfection which reduces the overall project costs from \$52M to \$42M and this will be carried through the evaluation. ARCADIS will develop rate impacts analysis for each of the scenarios for the City's consideration.

ARCADIS will present the revised cost estimates, capital plans and schedule to the City. The presentation will be held on or before February 6, 2015.

***Task 3 Develop a Water Quality Model***

ARCADIS understands the importance of an accurate and reliable water quality (WQ) model to support attainment of water quality standards (WQS) or demonstration that further CSO reduction will have no bearing on instream water quality. We will accomplish this by migrating the collection system model from InfoWorks CS to InfoWorks ICM, to utilize ICM's capability to simulate bacteria and river hydraulics. The model will be applied to develop an order-of-magnitude understanding estimate the recovery time of the Hudson River after typical storm events that cause CSO discharges.

ARCADIS will incorporate a representation of the Hudson River spanning approximately 20 miles between the USGS Gauging stations below Poughkeepsie and West Point. ARCADIS will utilize existing river cross sections from available Federal Emergency Management Agency (FEMA) data developed for existing Flood Insurance Studies (FIS) for the Hudson River, with approximately two cross sections per mile. The downstream station (West Point) will be utilized as a boundary condition for tidal stages. To simulate river flows between the stations, flow from the Wappinger Creek USGS station will be a boundary condition flow, and a hydrologic representation of the 615 square miles remaining will be developed.

A review of September 2011 through September 2014 USGS data will be performed by ARCADIS. This period is identified since the West Point station was taken offline in September 2014. The review will identify three events for calibration and verification as well as characterize low flow, high flow, and tidal conditions. ARCADIS will review available instream fecal coliform sampling data for the same period to confirm the model appropriateness for WQ. The review of sampling data is also essential to determine typical coliform concentrations in dry weather, storm events, and CSO events. Dry-weather and Wet-weather geometric means will also be calculated. CSO, stormwater, and WWTP loading data will be based on readily available data from other regional studies (e.g., Albany, New York City).

The updated model will not be calibrated but will be applied for a representative recreational season period to evaluate compliance with the stage geometric mean standard of 200 cfu/100 mL. The following four conditions will be simulated: Existing Conditions, CSO LTCP Completion showing the benefits of the LTCP, No CSOs to show potential attainment or non-attainment from non-CSO sources, and LTCP Completion with all other sources assumed to be brought into compliance.

***Task 4 Revise Post Construction Monitoring Plan***

ARCADIS will revise the Post Construction Monitoring section included in the CSO LTCP dated January 2013. The revisions will incorporate the comments by the NYS DEC that requires the City to demonstrate the effectiveness of implementation of the LTCP.

***Task 5 Develop LTCP Addendum***

ARCADIS will develop an addendum to the LTCP that will convey the information developed in Tasks 2, 3 and 4. The addendum will be organized in four sections – Executive Summary, Receiving Body Water Quality Assessment, Recommended CSO LTCP and Post Construction Monitoring Plan. The addendum will be intended to be accompanied by the LTCP dated January 2013.

The LTCP Addendum will be submitted to the City of Newburgh on or before February 20, 2015 for review and approval. The City of Newburgh will provide ARCADIS with comments on or before February 25, 2015 and ARCADIS will submit the LTCP Addendum to the NYS DEC on or before March 1, 2015.

**Final Deliverables**

Upon NYS DEC approval of the LTCP, ARCADIS will submit a final deliverable to the City, digital files by CD or flash drive, of the complete LTCP document in adobe .pdf format and the InfoWorks CS hydraulic model of the City's collection system.

**Fees**

ARCADIS is prepared to complete the scope of work presented herein on a time and material basis for a not to exceed fee of \$82,950, inclusive of a \$15,000 allowance for additional meetings or addressing minor NYS DEC comments as needed and authorized by the City separately. A detailed breakdown of the costs is presented on the Project Budget matrix attached. ARCADIS will be reimbursed at a rate of 3.1 times the direct labor rate and all expenses have a 10 percent fee added.

Please call me if you have any questions regarding the scope of services or the compensation requested to complete the work. We look forward to working with the City again.

Sincerely,

ARCADIS of New York, Inc.



Robert E. Ostapczuk, P.E., BCEE  
Associate Vice President

Copies:

D. Loewenstein (ARCADIS)

Attachment

*This proposal and its contents shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate the proposal. This proposal is not intended to be binding or form the terms of a contract. The scope and price of this proposal will be superseded by the contract. If this proposal is accepted and a contract is awarded to ARCADIS as a result of—or in connection with—the submission of this proposal, ARCADIS and/or the client shall have the right to make appropriate revisions of its terms, including scope and price, for purposes of the contract. Further, client shall have the right to duplicate, use, or disclose the data contained in this proposal only to the extent provided in the resulting contract.*

**PROJECT BUDGET**

**City of Newburgh  
Newburgh, New York  
CSO LTCP NYS DEC Comments Revisions**

DESCRIPTION	11	10	9	8	7	6	5	Hours Per Task
Task 1 - Project Management	8	0	0	0	0	4	0	12
Task 2 - Develop Cost and Schedule Scenarios	24	0	0	60	0	0	80	164
Task 3 - Develop Water Quality Model	16	64	16	0	70	0	0	166
Task 4 - Revise Post Construction Monitoring Plan	24	0	0	0	0	40	0	64
Task 5 - Develop LTCP Addendum and Executive Summary	24	16	0	40	40	0	0	120
<b>TOTAL LABOR HOURS</b>	96	80	16	100	110	44	80	526
<b>TOTAL DIRECT LABOR COSTS</b>	\$5,977	\$4,560	\$784	\$3,600	\$3,520	\$1,232	\$2,080	\$21,753

Subtotal Labor	\$67,434
Expenses:	
Labor Allowance	\$15,000
Misc Expenses:	\$516
<b>TOTAL</b>	<b>\$82,950</b>

RESOLUTION NO.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

**A RESOLUTION AUTHORIZING THE AWARD OF A  
BID AND THE EXECUTION OF A CONTRACT WITH  
BLACK ELECTRIC, INC. IN CONNECTION WITH  
THE ELLIS AVENUE AND BRADY AVENUE WATER STORAGE TANKS  
REHABILITATION PROJECT - CONTRACT 3 - ELECTRICAL CONSTRUCTION  
AT A COST OF \$56,700.00**

**WHEREAS**, this Council, by Resolution No.: 268-2014 of October 27, 2014, rejected all bids submitted in connection with the Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project, Contract 3, Electrical Construction; and

**WHEREAS**, the City of Newburgh has duly re-advertised for bids for such contract; and

**WHEREAS**, one (1) bid was submitted and opened; and

**WHEREAS**, based on a comprehensive review of the bid submitted, Barton & Loguidice has recommended that the City award said contract to Black Electric, Inc. in the amount of \$56,700.00, and

**WHEREAS**, it is further recommended that the City set aside an additional five (5%) percent to account for any change orders during construction; and

**WHEREAS**, all funding shall be derived from the 2012 Bond; and

**WHEREAS**, this Council has determined that awarding the bid and executing a contract with Black Electric, 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 Ellis Avenue and Brady Avenue Water Storage Tanks Rehabilitation Project, Contract 3, Electrical Construction, be and it is hereby awarded to Black Electric, Inc. at a cost of \$56,700.00; and

**BE IT FURTHER RESOLVED**, that the City Manager be and he is hereby authorized to enter into a contract, including terms and conditions as may be required by the Corporation Counsel and City Engineer, for such work in this amount; and

**BE IT FURTHER RESOLVED**, that the City Manager be and he is hereby authorized to execute all related contracts and change orders up to five (5%) percent of the bid amount.

*Celebrating over 50 years of service*

December 12, 2014

Mr. Jason Morris, P.E.  
City Engineer  
City of Newburgh  
83 Broadway  
Newburgh, NY 12550

Re: Recommendation for Award – Contract 3 – Electrical Construction  
Rehabilitation of Ellis Avenue & Brady Avenue Water Storage Tanks  
City of Newburgh, Orange County, New York  
File: 1352.002.001

Dear Mr. Morris:

Barton & Loguidice, D.P.C. (B&L) has reviewed the bid submitted for Contract 3 – Electrical Construction for the above referenced project and the certified bid tabulation is attached for your review. Only one (1) bid was submitted for Contract 3 – Electrical Construction rebid on December 9, 2014.

Based on our review of the bid submitted for Contract 3 – Electrical Construction and qualifications of the bidder for the referenced project, B&L recommends the City award Contract 3 – Electrical Construction to Black Electric, Inc. in the amount of \$56,700.00. Refer to the attached certified bid tabulation sheet.

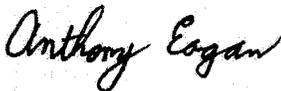
Note that Black Electric, Inc.'s bid price of \$56,700.00 for the electrical rehabilitation of the two tanks is \$6,700 higher than B&L's opinion of probable cost of \$50,000.00 and \$18,300.00 less than the bid received September 23, 2014 from JPI Painting, Inc. of \$75,000.00. This resulted in a savings of \$18,300 to the City from the first time it was bid. Based on our review of the Bid, the Bid Submitted did not contain the Statement of Surety's Intent as requested within the Documents. We believe this to be non-material and non-substantial as it will not affect the scope of work, or the price and have requested this to be submitted by Black Electric.

It is our recommendation that the City award the Contract to Black Electric, Inc. in the amount of \$56,700.00. It is also recommended that the City set aside this Contract amount plus an additional 5% to account for any change orders during construction.

If you have any questions, please feel free to contact our office.

Very truly yours,

BARTON & LOGUIDICE, D.P. C.



Anthony T. Eagan, P.E.  
Managing Engineer

KLK/ojf  
Attachments

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**CITY OF NEWBURGH  
 1352.002.001 ELLIS & BRADY AVENUE WATER STORAGE TANK REHABILITATION  
 BID OPENING - 11:00 AM, DECEMBER 9, 2014  
 BID TABULATION - CONTRACT 3 - REBID**



Item No.	Description	Estimated Quantities	Unit	Engineer's Opinion of Probable Costs		Black Electric, Inc.	
				Unit Price	Amount	Unit Price	Amount
1	Electrical Construction	1	LS	\$50,000.00	\$50,000.00	\$ 56,700.00	\$ 56,700.00
<b>TOTAL (ITEMS 1)</b>					<b>\$50,000.00</b>	<b>13.40%</b>	<b>\$56,700.00</b>
ACKNOWLEDGE ADDENDA							X
BID FORM							X
IRANIAN ENERGY SECTOR DIVESTMENT							X
NON-COLLUSION CERTIFICATION							X
STATEMENT OF SURETY INTENT							X
BID BOND							X
APPRENTISHIP PROGRAM							N/A

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

BY:

*Anthony Egan*

RESOLUTION NO.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO ACCEPT A PROPOSAL AND EXECUTE A CONTRACT WITH  
THE CHAZEN COMPANIES TO PREPARE A LANDFILL DISTURBANCE PLAN  
FOR THE NEWBURGH DPW PARCELS IN CONNECTION WITH  
THE 5 SCOBIE DRIVE INDUSTRIAL PROJECT  
AT A COST NOT TO EXCEED \$26,760.00**

**WHEREAS**, by Resolution No. 7-2015 of January 12, 2015, the City Council of the City of Newburgh authorized the City Manager to submit a joint application with the City of Newburgh Industrial Development Agency to apply for and accept if awarded funds in an amount not to exceed \$310,000.00 from the Orange County Industrial Development Agency to support remedial work and tree cutting at the Department of Public Works (“DPW”) property site and tree cutting at 5 Scobie Drive in connection with the 5 Scobie Drive Industrial Park Project; and

**WHEREAS**, the Orange County Industrial Development Agency awarded funding to the City of Newburgh in the amount of \$50,000.00 for the purpose of developing a Landfill Exemption Plan for the portion of the DPW property adjacent to 5 Scobie Drive; and

**WHEREAS**, The Chazen Companies has submitted a proposal for professional engineering services in connection with the preparation of a Landfill Disturbance Plan for the City’s DPW parcel for submission to and approval from the New York State Department of Environmental Conservation; and

**WHEREAS**, the costs of the proposal shall be paid by the Orange County Industrial Development Agency through the funding award of January 8, 2015; and

**WHEREAS**, this Council has determined that accepting such proposal and entering into a contract with The Chazen Companies 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 to accept a proposal and execute a contract with The Chazen Companies to prepare a Landfill Disturbance Plan for the Newburgh DPW parcel to facilitate future development of 5 Scobie Drive Industrial Park Project at a cost not to exceed \$26,760.00.



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**Hudson Valley Office**

21 Fox St., Poughkeepsie, NY 12601  
P: (845) 454-3980 F: (845) 454-4026  
[www.chazencompanies.com](http://www.chazencompanies.com)

Capital District Office (518) 273-0055  
North Country Office (518) 812-0513

January 13, 2015

Jason C. Morris, PE, City Engineer  
83 Broadway  
Newburgh, New York 12550

*Re: City of Newburgh Landfill Disturbance Plan Proposal  
Chazen Job No: 41448.00*

Dear Mr. Morris:

The Chazen Companies (Chazen) appreciates the opportunity to continue assisting the City of Newburgh with preparation of a Landfill Disturbance Plan outlining methods and locations to NYSDEC facilitating development on the adjacent Scobie Drive IDA parcel. The contents of our plan submission to NSYDEC will follow guidance dated March 11, 2011 "NYSDEC Region 3 Office/Solid Waste Program Information Required for Department Approval of a Landfill Disturbance Plan."

The tasks proposed below are based on emailed agreement (Jan 13, 2015) on these work tasks, and task numbers follow previously-approved tasks.

Task 3 – Landfill Disturbance Plan submission:

1. Chazen will prepare a site conditions map based on available information including: site conditions walkover, GIS and GPS based reference location points, review of historic aerial and topographic map set, and site survey maps from the adjacent parcel in ACAD. Our map will be stamped by a licensed P.E. once review comments from NYSDEC are received. In the event, the adjoining parcel is unwilling to provide the existing conditions in ACAD, NYSDEC may require at least partial survey control on this site conditions map; Chazen would in this case provide a separate scope of services for performing a topographic boundary and survey in this area. Such mapping is necessary to perform the services outlined in item 2.
2. Once plans for solid waste repositioning are finalized (on site, on IDA parcel, off-site disposal), Chazen will prepare a site grading drawing and erosion and sediment control plan for the City parcel. This will include a side slope drawing if needed, and if needed, a concept design for waste relocation and positioning on the DPW parcel. Drawings will be stamped by a licensed P.E. once NYSDEC review comments are received. The erosion and sediment control plan may reference or mimic existing programs already prepared by or for the adjoining parcel.
3. If unconventional slopes (e.g. 2 on 1) are preferred along the property line, Chazen will conduct a geotechnical stability analysis.
4. Chazen will prepare a written Waste Relocation/Handling/Disposal narrative, per the cited guidance document. This will describe waste movement, handling, side-slope re-grading, and any waste re-positioning on the DPW site. The Plan will also include a contingency plan for management of any potentially-hazardous materials encountered during waste relocation.

- This Task includes a review of this this work plan with NYSDEC prior to beginning work, one draft submission to NYSDEC, one response to NYSDEC comments, followed by a final plan submission.

Note that this task currently includes no sampling, no formal land survey, no gas monitoring, no formal engineering design sheets for on-site waste repositioning, nor a site deed instrument which the NYSDEC may require.

Task 4 – Consulting Services

- Chazen will be available to the City for consultations with NYSDEC, the City, consultant for the adjacent parcel, or others, as needed and upon request of the City. This task will be invoiced for discussions related to off-site waste repositioning options and/or off-site waste disposal.

**Task, Fee and Time Schedule Summary**

Tasks		Fee Estimates		
Task No.	Task Description	Lump Sum Fee Bill	Time & Materials Estimate	Laboratory Fees
003	Landfill Disturbance Plan Submission	\$21,760 with stability analysis, or \$17,760 without.	---	NA
004	Consulting Services		\$5,000 initial allowance	NA
<b>Totals</b>		\$21,760	---	NA
<b>Total Estimated Cost</b>		<b>Up to \$26,760</b>		

**Agreement**

You have previously signed our standard professional services contract and our prior proposal outlined our monthly billing procedures. Your signature below authorizes the tasks above and agrees to the terms and conditions of our professional services contract. This proposal is good for 30 days.

Thank you again for the opportunity to be of service.

Sincerely,



Russell Urban-Mead, CPG  
 Senior Hydrogeologist/VP Environmental Service  
 cc: file

\_\_\_\_\_  
 Authorizing Signature and Date

ORDINANCE NO.: \_\_\_\_\_ - 2015

OF

JANUARY 26, 2015

AN ORDINANCE AMENDING SECTION 163-1 "SCHEDULE OF CODE FEES" OF  
CHAPTER 163 "FEES" OF THE CODE OF THE CITY OF NEWBURGH

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

Section 1. Chapter 163 entitled "Fees" of the Code of the City of Newburgh be and hereby is amended as follows:

§ 163-1. Schedule of Code Fees.

Chapter 220, Parks and Recreation Areas

§ 220-19 Use of Aquatic Center and Athletic Fields

Summer camp for ages six years to 13 years old	<del>Residents: \$ 200 per child</del>
	<del>Nonresidents: \$ 300 per child</del>
	<u>\$350.00 per child</u>

Section 2. This ordinance shall take effect immediately.

~~Strikethrough~~ denotes deletion  
Underlining denotes addition

ORDINANCE NO.: \_\_\_\_\_ - 2015

OF

\_\_\_\_\_, 2015

AN ORDINANCE AMENDING CHAPTER 163  
ENTITLED "FEES" OF THE CODE  
OF THE CITY OF NEWBURGH

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

Section 1. Chapter 163 entitled "Fees" of the Code of the City of Newburgh be and hereby is amended as follows:

§ 163-1. Schedule of Code Fees.

Chapter 276, Tobacco

§ 276-7 Tobacco Retail License Application Fee \$10.00 Non-refundable

§ 276-7 Tobacco Retail License Annual Fee \$50.00

Tobacco Retail License Replacement Fee \$50.00

Section 2. This ordinance shall take effect on February 1, 2015 in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

Underlining denotes additions.

~~Strikethrough~~ denotes deletions.