

A regular meeting of the City Council of the City of Newburgh was held on Monday October 24, 2011 at 7:00 P.M. in the Council Chambers at City Hall, 3rd Floor, 83 Broadway, Newburgh, New York 12550

The Prayer was led by Pastor Brock and the Pledge of Allegiance was led by Councilwoman Bell.

Present: Mayor Valentine, presiding; Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard - 5

Councilwoman Angelo moved and Councilwoman Bello seconded that the minutes of the regular meeting of October 11, 2011 be approved.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

CARRIED

REPORTS

Councilwoman Angelo moved and Councilwoman Bello seconded that the City Clerk's Report, the Registrar of Vital Statistics Report and the Civil Service Administrator's Report for the month of September be received, filed and made available to the Press.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

CARRIED

COMMUNICATIONS

Councilwoman Angelo moved and Councilwoman Bello seconded that the Notices of Claim be referred to Corporation Counsel with power to act.

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

CARRIED

STATEMENT READ BY MAYOR VALENTINE

“For tonight’s record this is a statement rescinding the statement made at the City Council Meeting of October 11, 2011. That statement was read by me before comments from the Council at the end of the meeting. Even though the four City Council members that put together this statement disagreed with the actions taken by one of the City Council members we do not want this to cost the City any money in legal fees so we are basically rescinding that statement”.

ANNOUNCEMENT

Mayor Valentine noted that there are two Charter Review Commission meetings scheduled prior to the upcoming Election. The first one will be on Tuesday, October 25, 2011 at 7:00 p.m. at the Ritz Theater, Safe Harbors of the Hudson at 111 Broadway and the second will be on October 27, 2011 at the Citizens Advisory Meeting at 7:00 p.m. at the Activity Center, 401 Washington Street.

PRESENTATION

Deirdre Glenn introduced Tom Ritzenthaler of CSARCH Architects who did a power point presentation on the Newburgh Armory Unity Center Phase Two improvements which include an indoor soccer field. This renovation will also give us the ability to host trade shows, concerts and events.

Mayor Valentine acknowledged that Senator Larkin is with us tonight along with the Presidents from Orange County Community College, Dr. Richards and Father Mackin from Mt. St. Mary's. Bill Kaplan is also here tonight and he thanked him for everything he has done for this.

Mayor Valentine told the audience members that this was already approved on Thursday night by the City Council.

PUBLIC HEARING

Mayor Valentine called for a public hearing that was advertised for this meeting concerning the City Of Newburgh's proposed actions with respect to the Community Development Block Grant Program for the Consolidated Plan for Housing and Community Development for fiscal year 2012.

Courtney Kain, Acting Community Development Director, gave a brief overview of the 2012 plan along with some updates and accomplishments.

Action Plan

The plan contains the City's Action Plan for its Community Development Funds (Fiscal Year 2012). The proposed Action Plan is as follows:

Program	Amount:	Use:
Administration	\$112,592	Funding of staff and administrative costs. .5fte office manager and CD Director. Temporary Analysis of impediments planning. System upgrades.
In-Rem Stabilization Program	\$31,912	Program to maintain tenants and maintain properties received via the foreclosure process. Temporary DPW staff and .5 FTE Property Manager.
Home Ownership Rehabilitation	\$55,791	A grant/ loan program for low income residents to make home improvements. .5 FTE housing loan officer and Code Enforcement
Economic Development- Job Training	\$90,000	Phase II. Coordinated Workforce Development plan.
Demolition	\$200,000	Demolition of Hazardous Buildings within Census Tract 4 & 5
Scattered Sidewalk/ Street Improvement	\$150,000	Improvements to streets and sidewalks in census tract 4 & 5
Special Economic Development Activities	\$ 117,958	Coordination of Special Development Projects, Commercial Façade Development, and the Development of identified industrial buildings though partnerships with Landbank, Industrial Development Agency. .5 FTE CD Director and staff position.
Newburgh Mural Project	\$30,000	Development of Public Art via murals in Census tract 4 & 5.
Fair Housing Counseling	\$26,747	As a result of the Analysis of Impediments, the City will contract a pilot an implementation program
Community & Youth Programming	\$35,000	Leverage 2011 funds to provide grants to not for profit organizations for youth service activities. There are \$15,000 remaining unallocated from 2010
Total Funding Requests:	\$ 850,000	

REVENUE

Estimated CDBG Entitlement (FY 2012)
 Estimated Program Income

\$830,000

\$20,000

TOTAL:

\$850,000

City of Newburgh

CDBG 2011 Activities Update and Accomplishments

Workforce Development

- Adopted the City's 1st Section 3 plan - compliant with HUD standard. This plan encourages contractors awarded jobs over \$200,000 or greater, to hire and subcontract locally.
- Contracted with Workforce Development Institute (WDI) to develop a strategic Workforce Development Plan – *Phase I target date for completion Jan. 2012*

Housing Development

- 2010-2011 completed 13 homeowner and rental projects including roofing, boilers, and lead laterals .
- Six additional projects are under construction.
- Three homeowner rehabilitation applications are currently being reviewed.
- Maintained 100 plus properties both vacant and rental units.
- Partnering with Landbank and other entities to leverage CDBG funds within target area for redevelopment.

General Activities

- Demolition & Streetscape Improvements: Completed RFQ process and hired Engineering firm CT Male to develop bid documentation for CDBG projects.
- Completed \$95,000 in youth activities – this includes 2010 and 2011 contracts. Grants included youth workforce development, expansion of summer camps, and additional case management, and wrap around services.
- Repaid Section 108 Crystal Lake Loan – loan was eligible for full payment – *saving the City accrued interest in future years.*
- Completed Phase I Outreach and Research for Analysis of Impediments to Fair Housing – Phase II *to be completed by June 2012.*

Fall 2011 Activity

- Contractor Capacity Building Training for Section 3
- Conference Call Employment Agencies & other Section 3 Partners to discuss upcoming bids
- November - Demolition Construction Round 1
- December – Design workshop for standard Neighborhood Streetscape Design for CDBG Targeted Area/ Landbank Area

PHASE I DEMOLITIONS

☐ 10 Dubois Street
Street

☐ 45-47 Chambers Street

☐ 7-11 Johnes

☐ 113 Washington Street
Street

☐ 98 Lander Street

☐ 159 Grand

Barbara Smith, Powell Avenue, asked how we select the census tracts because more and more of the City of Newburgh is turning into Census Tract 4 and 5. Why are we devoting everything year after year to Census Tract 4 and 5 when you can go throughout the City of Newburgh and see things that are in desperate need in other areas? We just got through closing off Robinson Avenue for the repaving and even though the traffic was routed down Water Street people also traveled down Powell Avenue. Powell Avenue has now become beaten up from the extra traffic so she would like to know if there is anything in the CDBG funding that can help repave that street since it is our gateway to the City, Hospital and College.

Courtney Kain, Acting Community Development Director, explained that Census Tract 4 and 5 was identified as a part of the 5-year Action Plan which is from 2010 to 2015. We have a primary target area which is Lander, Chamber and Johnston Street up to South Street from Broadway and our secondary target area is Census Tracts 4 and 5. What we say in the Plan is that we will aim to spend 70% of the funds in those target areas. It doesn't necessarily preclude the other census tracts but it does prioritize them. She thinks that with census data coming out and as we get a better sense of how our population has changed we will be able to address and take a look at moving forward. As for Powell Avenue and the other streets they are not precluded either. We can certainly take a look at them so it is good for people to tell us what condition their streets are in.

Judy Kennedy, 162 Grand, said that she believes it is important to have a focused area for improvements rather than sprinkling it all over. If we can focus our efforts in some particular areas and make a significant enough improvement that we truly change, then that whole neighborhood will lift up and it starts to build some hope and synergy towards getting this job done. People need to see significant change in particular areas. It appears that we have chosen Census Tract 4 and 5 to focus on and she thinks that does help people to understand this is where we are working right now.

Councilman Dillard reminded everyone that the Land Bank has also targeted the Powell Avenue area so there will be some things happening over there.

Denise Ribble, City of Newburgh, said that another point of information is that the Census Tracts are chosen because they meet the criteria of having a concentration of people with low or very low incomes. Remember that CDBG's goals are to provide decent housing, a suitable living environment and expand economic opportunities. That doesn't mean that at some point in the future other areas of the City may also meet those criteria. She thinks that this is a really good effort compared to previous years in terms

of what the focus is and what projects are being looked at. Hopefully if the Land Bank and the Waterfront Heritage area gets funding from New York State it will bring a whole lot of leverage of different economic development and job creation opportunities for our people. To have these things happening in a coordinated way she thinks is very important and it will help us move forward into the future in a positive way.

Janet Gianopoulos, City of Newburgh, said that there is this brief report about 2011 activities, updates and accomplishment, however, since we are talking about the expenditure of our tax monies it doesn't really indicate how they were expended. She thinks it would be helpful to have a report that indicates what is being done where so that we can see because we talk about a coordinated effort and this just isn't clear. For 2012, she thinks it would be good to see a chart listing what is going to be done each month in what area and how much will be expended.

There being no one else wishing to speak, this public hearing was closed.

Mayor Valentine asked Courtney Kain what the time frame is on this.

Courtney Kain, Acting Community Development Director, said that if the Council is satisfied, at their next meeting they can approve the Budget and make any changes that the comments warrant. The next meeting would be the meeting to vote on the Budget.

REMINDER

Mayor Valentine stated that there will be a public hearing to receive comments concerning the adoption of the 2012 Budget on Monday, November 14, 2011 at 7 p.m. at the Activity Center, 401 Washington Street.

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Denise Ribble, City of Newburgh asked for a brief explanation of item #20 which is the resolution ratifying a memorandum of agreement between the City of Newburgh Police Superior Officers Association and authorizing the City Manager to execute the same. She added that she supports items #21, 22, 23 and 24. In regard to item #25, she asked if Craig could perhaps explain briefly if this is to settle the issues that have to do with the filter press plant and is there any expense associated with this resolution.

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

CITY MANAGER'S REPORT

Acting City Manager, Richard Herbek, said that he is pleased to report that we have an offer from Hudson Baylor to sponsor a community shred event to shred your personal documents that you don't need anymore and want to get rid of. Many communities do this and it is being done as a public service by Hudson Baylor. It will take place on Saturday, November 12th from 8:00 a.m. to Noon at no cost to the City or the people who wish to shred their documents. There will be a Press release on this shortly.

Also, we have been working closely with the Orange County Water Authority who applied for a Local Government Efficiency Grant and we received word today that it has been funded in the amount of \$450,000.00. This is for the Orange County Water Authority to undertake the Northeastern Orange County Water Supply Implementation Plant. In addition this will involve some further study of the various connections between the Town of New Windsor, the Town of Newburgh and the City with the hope that we will on a more regular or permanent basis be able to sell water to our two adjacent towns.

RESOLUTION NO.: 208 - 2011

OF

OCTOBER 24, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER OR
THE CHIEF OF POLICE AS MANAGER'S DESIGNEE
TO EXECUTE AN AGREEMENT WITH THE COUNTY OF ORANGE
CONFIRMING CITY OF NEWBURGH PARTICIPATION
IN THE STOP-DWI PROGRAM
FOR THE PERIOD OF OCTOBER 7, 2011 TO JANUARY 1, 2012 PROVIDING
THE CITY WITH AN AMOUNT NOT TO EXCEED \$2,828.00**

WHEREAS, the County of Orange (hereinafter "County") has provided the City of Newburgh (hereinafter "City") with an agreement, to provide for the funding of the STOP-DWI Program within the City of Newburgh for the period of October 7, 2011 and ending January 1, 2012, which includes the holidays of Thanksgiving, Christmas and New Year's enforcement campaigns; and

WHEREAS, the County shall reimburse the City of Newburgh for increased patrol and court time in connection with enhanced enforcement of laws prohibiting driving while intoxicated; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manger or the Chief of Police as Manager's designee be and he is hereby authorized to execute an agreement with the County of Orange confirming the City's participation in the STOP-DWI Program in order to fund the additional cost of stepped-up police patrols and related court appearances for the period of October 7, 2011 through January 1, 2012, not to exceed \$2,828.00

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

**RESOLUTION NO.: 209 - 2011
OF
OCTOBER 24, 2011**

**A RESOLUTION REQUESTING AN EXEMPTION FROM COUNTY
TAXES FOR THE CITY'S RESERVOIR AND FILTER PLANT
PROPERTIES FOR THE YEAR 2013**

BE IT RESOLVED, by the Council of The City of Newburgh, New York, that the City Manager be and he is hereby authorized and directed to request a real property tax exemption from real property taxes to be levied by the County of Orange on all of the City's reservoir and filter plant properties, and the buildings and improvements thereon, and to be constructed thereon in the Town of Newburgh and the Town of New Windsor, pursuant to the provisions of Section 406, subdivision 3, of the Real Property Tax Law of the State of New York.

The requested exemption would include exemption from all taxation, special ad valorem levies and special assessments through December 31, 2013, so long as the subject premises are used for the aforesaid purposes.

The specific properties involved are as follows:

<u>OWNER</u>	<u>MUNICIPALITY</u>	<u>TAX PARCEL NO.</u>
CITY OF NEWBURGH	TOWN OF NEW WINDSOR	4 - 1 - 38
		4 - 1 - 35
		4 - 3 - 1.1
		4 - 1 - 12.2
		4 - 1 - 9.21
		4 - 1 - 10
		32 - 2 - 53
	TOWN OF NEWBURGH	75 - 1 - 17
		97 - 3 - 17
		97 - 2 - 22.1
		97 - 3 - 10
		97 - 1 - 44

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 210 - 2011

OF

OCTOBER 24, 2011

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
AMENDING RESOLUTION NO.: 28-2011 OF JANUARY 24, 2011
EXPRESSING CONCEPTUAL SUPPORT FOR THE APPLICATION OF
MOUNTCO CONSTRUCTION AND DEVELOPMENT CORP. AND SAFE
HARBORS OF THE HUDSON HOUSING DEVELOPMENT FUND
COMPANY, INC., TO NEW YORK STATE HOMES AND COMMUNITY
RENEWAL FOR FEDERAL, STATE, AND LOCAL FINANCIAL
ASSISTANCE TO DEVELOP AND CONSTRUCT A PROPOSED MIXED-
USE AFFORDABLE HOUSING PROJECT KNOWN AS LIBERTY HOUSE TO
BE SITUATED ON NOW VACANT LANDS LOCATED ON THE WESTERLY
SIDE OF LIBERTY STREET BETWEEN BROADWAY AND ANN STREET
(Section 36, Block 3, Lots 12 and 14.1) IN THE CITY OF NEWBURGH**

WHEREAS, by Resolution No. 28-2011 of January 24, 2011, the City Council of the City of Newburgh expressed its conceptual support for the application of Mountco Construction and Development Corp. and Safe Harbors of the Hudson Housing Development Fund Company, Inc. (collectively the "Applicant") to New York State Homes and Community Renewal for federal, state and local financial assistance for the development and construction of a proposed mixed-use affordable housing project known as Liberty House under proposed terms and conditions, including the payments in lieu of taxes (PILOT), the payment of a municipal impact fee and an expedited coordinated review under the New York Environmental Quality Review Act; and

WHEREAS, the Applicant has informed the City Council of a modification of the Proposed Project to consist of approximately seventy-one (71) affordable rental housing units and approximately ten thousand (10,000) square feet of day care and related community facility space, to be situated on now vacant lands located on the westerly side of Liberty Street between Broadway and Ann Street (Section 36, Block 3, Lots 12 and 14.1) in the City of Newburgh (the "Proposed Project") ; and

WHEREAS, the Applicant has requested that this City Council express its support for the modified Proposed Project under the same proposed general terms and conditions as the Project originally was proposed;

WHEREAS, the City Council believes that it is in the best interests of the City of Newburgh to express its support for the Proposed Project as modified under the same proposed general terms and conditions;

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Newburgh, New York, expresses its conceptual support for the application of Mountco Construction and Development Corp. and Safe Harbors of the Hudson Housing Development Fund Company, Inc., to New York State Homes and Community Renewal for Federal, State, and local financial assistance to develop and construct the Proposed Project as modified; and

BE IT FURTHER RESOLVED, that the City Council of the City of Newburgh expresses its willingness to consider the proposed general terms and conditions of a Proposed PILOT Agreement and the Proposed Municipal Impact Fee, if the Applicant is successful in obtaining construction financing for the project, and to expedite coordinated review of the Proposed Project under the State Environmental Quality Review Act ("SEQRA"), as lead agency in coordination with the Planning Board, Zoning Board, Architectural Review Commission, and any other involved agencies, so as to fully review the environmental impacts of the Proposed Project including but not limited to its fiscal and economic impacts on the City of Newburgh.

Councilman Dillard said that he is still not clear on this as it relates to parking and there will be a parking disaster in that area during business hours. We have several businesses and restaurants down there and they barely have enough parking for the customers so until he gets some clarity on this he will be voting "no".

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Mayor Valentine-3

Nays - Councilwoman Bello, Councilman Dillard - 2

ADOPTED

RESOLUTION NO.: 211 - 2011

OF

OCTOBER 24, 2011

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-
ENTRY FROM A DEED ISSUED TO WILLIAM CAPPELLETTI
TO THE PREMISES KNOWN AS 201 SOUTH STREET
(SECTION 18, BLOCK 1, LOT 2)**

WHEREAS, on January 11, 2010, the City of Newburgh conveyed property located at 201 South Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 18, Block 1, Lot 2, to William Cappelletti; and

WHEREAS, Mr. Cappelletti has requested a release of the restrictive covenants contained in said deed; and

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

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

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

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 212 - 2011

OF

OCTOBER 24, 2011

**A RESOLUTION TO IMPLEMENT A CITY-WIDE
CURFEW FOR MINORS 16 YEARS OF AGE AND UNDER
ON OCTOBER 28TH, 29TH, 30TH AND 31ST
FROM 9:00 P.M. TILL 6:00 A.M.**

WHEREAS, the City of Newburgh has a general obligation to ensure the safety and welfare of the general population of the City including minors, along with protection of private property; and

WHEREAS, October 28th, 29th, 30th and 31st are associated with Halloween related activities, including "Trick or Treating" and other related outdoor activities, some of which might be prejudicial to the safety and welfare of the population and protection of private property; and

WHEREAS, the City of Newburgh determines that the passage of a curfew resolution for Halloween and the preceding night will assist in protecting the welfare of minors by reducing the likelihood of their involvement in inappropriate behavior, while aiding parents or guardians of minors entrusted in their care;

NOW THEREFORE, BE IT RESOLVED:

THIS COUNCIL HEREBY DECLARES a city-wide curfew for minors from 9:00 P.M. until 6:00 A.M. each day, starting Friday, October 28, 2011, and ending Tuesday, November 1, 2011; and

BE IT FURTHER RESOLVED, this Council urges all parents to inform their children and supervise the implementation of this City-wide curfew so that we may avoid problems and promote the safety, health and welfare of our City's young people and property owners; and

BE IT FURTHER RESOLVED, that it shall be a defense to a violation of this curfew that the minor was accompanied by the minor's parent or guardian, engaged in an employment activity, or involved in an emergency or other legally justifiable activity.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 213 - 2011

OF

OCTOBER 24, 2011

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE IN REM TAX FORECLOSURE
OF LIENS FOR THE YEAR 2009 RELATIVE TO
20 PIERCES ROAD UNIT NUMBER D7 (SECTION 53, BLOCK 1, LOT 1.-7)**

WHEREAS, The City of Newburgh commenced a proceeding for the foreclosure of certain tax liens, such action being designated as Orange County Index Number 2009-12857; and

WHEREAS, the attorneys for TD Bank National Association have advised the City that they are prepared to settle such action; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle this matter;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to withdraw the lien on the property located at 20 Pierces Road Unit Number D7 (Section 53, Block 1, Lot 1.-7), City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Fifteen Thousand Three Hundred Twenty Three And 19/100 (\$15,323.19) Dollars representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, including but not limited to all open 2010-2011 school taxes, water charges and sewer charges, are all paid in full by certified or bank check on or before October 31, 2011.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 214 - 2011

OF

OCTOBER 24, 2011

**A RESOLUTION RATIFYING A MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND THE
CITY OF NEWBURGH POLICE SUPERIOR OFFICERS ASSOCIATION
AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SAME**

WHEREAS, members of the City of Newburgh Police Superior Officers Association ("PSOA") have advised the City that they are prepared to assist the City by retiring no later than December 31, 2011; and

WHEREAS, the PSOA has offered to forego the payment of shift differential during the period January 1, 2012 and December 31, 2012 and receive twelve paid holidays during the period January 1, 2012 and December 31, 2012; and

WHEREAS, in exchange the City will offer a retirement incentive of one lump sum payment of \$40,000.00 to those PSOA members, who are eligible and actually retire on or before December 31, 2011; and

WHEREAS, the foregoing terms have been reduced to a Memorandum of Agreement ("MOA"), a copy of which is annexed hereto;

WHEREAS, the City Council has reviewed the terms of the MOA, and has consulted with the representatives of the City, who have recommended that the City Council approve the agreement and find that ratifying the MOA is in the best interest of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, that this Council of the City of Newburgh, New York hereby ratifies the Memorandum of Agreement attached hereto; and

BE IT FURTHER RESOLVED, that the City Manager be and he hereby is authorized to execute the attached Memorandum of Agreement between the City of Newburgh and the City of Newburgh Police Superior Officers Association regarding their retirement and buyout incentive.

Acting City Manager, Richard Herbek said that we have been working with the various Unions mainly on give-backs, downsizing and concessions so that we can bring the 2012 Budget in the way that it has been proposed. With the PSOA we were able to work out an agreement whereby between two and four individuals will be retiring. They are doing this in order to save some of the personnel who are scheduled for layoff. He read some of the elements of the agreement to the audience and said that this provides a payout to approximately two to four Officers. It will lower the head count in the police department and allow us to save some of the Officers who have been scheduled for layoff.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

AGREEMENT, by and between the City of Newburgh and the Newburgh PSOA.

WHEREAS, the City and the PSOA are parties to a now expired collective bargaining agreement (CBA) covering the period January 1, 2006 through December 31, 2008; and

WHEREAS, the City and the PSOA continue to negotiate regarding a successor agreement to the expired CBA; and

WHEREAS, the City is experiencing an unprecedented fiscal crisis; and

WHEREAS, the City and the PSOA have negotiated in good faith and reached an agreement.

NOW, THEREFORE, IT IS AGREED THAT:

1. Notwithstanding the provisions of Article VII.C of the CBA, there shall be no shift differential during the period January 1, 2012 through December 31, 2012 and no unit member shall receive or be entitled to receive or accrue a shift differential during that period.

2. Also notwithstanding the provisions of Article IV.A and C of the CBA, effective during the period January 1, 2012 through December 31, 2012, unit members shall receive only twelve (12) paid holidays with Washington's Birthday and Lincoln's Birthday being deleted from C. and replaced by the federal holiday recognized as President's Day.

3. A retirement incentive will be offered to those PSOA members who (1) are eligible to and actually retire into the New York State and Local Police and Fire Retirement System on or before December 31, 2011; and (2) submit to the City Manager on or before November 30, 2011 an irrevocable letter of resignation for retirement

purposes to become effective on or before December 31, 2011 in the form of the attached, which may not be altered in any way. For employees who meet the requirements set forth in (1) and (2), the retirement incentive shall be one lump sum payment of \$40,000, which shall be paid in full prior to December 31, 2011. Submission of the irrevocable letter of resignation for retirement purposes shall not preclude, or in any way negatively impact, the resigning unit member's receipt of any other benefit to which (s)he may be entitled pursuant to the CBA upon retirement or separation from City employment.

4. In the event that two or more individuals retire pursuant to the Retirement Incentive set forth in paragraph 3, then the City agrees that no current PSOA member shall be demoted in rank during the period January 1, 2012 through December 31, 2012.

5. The City understands and agrees that during the period January 1, 2012 through December 31, 2012, there shall be no fewer than three unit members who hold the rank of Lieutenant and receive the benefits, including compensation, of a Lieutenant as set forth in the CBA. Accordingly, if two or more unit members currently holding the rank of Lieutenant resign for the purpose of retirement pursuant to paragraph 3 above, promotion(s) will occur so that, effective no later than January 1, 2012 and continuing until December 31, 2012 only, there will be a minimum of three unit members holding the rank of Lieutenant.

6. Nothing contained in this Agreement shall be deemed to be precedent setting. This document, its existence and contents, may not be cited in any other matter, such as, but not limited to, any grievance, arbitration, PERB conference or hearing or any court-related proceeding, except for an action to enforce its terms.

7. This Agreement constitutes the entirety of the agreement among the parties. There are no other agreements, oral or otherwise.

8. This Agreement is subject to ratification by the PSOA membership and ratification and approval by the City Council.

FOR THE CITY:

Dated: _____

FOR THE PSOA:

Dated:

Rick Herbek
Acting City Manager
City of Newburgh
City Hall
83 Broadway
Newburgh, NY 12550

Re: My Retirement

Dear Mr. Herbek:

Please accept this as my letter of resignation for retirement purposes from my position as _____ with the Newburgh Police Department effective at the close of business on _____ **[INSERT DATE NO LATER THAN DECEMBER 31, 2011]** .

I understand, and represent to you, that my decision to submit this letter is irrevocable and that it is made voluntarily and of my own free will.

Sincerely,

RESOLUTION NO.: 215 - 2011

OF

OCTOBER 24, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED A GRANT IN THE AMOUNT NOT TO EXCEED \$7 MILLION AND REQUIRING NO MATCH FROM THE CITY TO THE EMPIRE STATE DEVELOPMENT CORPORATION REGIONAL COUNCIL CAPITAL FUND AND ECONOMIC PURPOSES GRANT TO FUND THE NEWBURGH REDEVELOPMENT READINESS INITIATIVE

WHEREAS, the City of Newburgh wishes to submit an application to the NY State Empire State Development Corporation through Hudson Valley Regional Councils Consolidated Funding Application process for the funding of s Redevelopment Readiness Initiative aiming to make Newburgh a City Open for Business and Development; and

WHEREAS, the City will partner with the Newburgh Community Land Bank, the City of Newburgh Industrial Development Agency, Pace University, and local workforce training providers, unions, and business owners to establish a redevelopment readiness program with three components: City readiness through policies and processes, worker readiness, and site readiness; and

WHEREAS, grant funding for such program is available and the City seeks up to seven million (\$7,000,000) dollars for a three year program to train and hire local workforce to mitigate environmental hazards and unsafe neighborhood structures in preparation for development and no City match is required; and

WHEREAS, the goal of the Initiative is to create an opportunity for the City's unemployed and underemployed; stabilize a 16 block Newburgh Community Land Bank area; attract new investment to the City and support existing businesses; create development ready buildings sites; develop new rental and homeownership opportunities; establish fast track acquisition and processing procedures; and,

WHEREAS, the Council has determined that applying for and, if awarded, accepting such grant funds is in the best interest of the City of Newburgh residents and local businesses;

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 apply for and accept if awarded a grant from New York State Empire Development Corporation in the amount not to exceed seven million (\$7,000,000)

Dollars with no City matching funds required to support the Redevelopment Readiness Initiative.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 216 - 2011

OF

OCTOBER 24, 2011

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED A GRANT IN THE AMOUNT NOT TO EXCEED ONE MILLION DOLLARS AND REQUIRING A FIFTY ONE THOUSAND DOLLAR MATCH TO VARIOUS AGENCIES AS A PART OF THE NEW YORK STATE REGIONAL COUNCIL GRANT TO FUND THE NEWBURGH BEACON FERRY HERITAGE PROJECT

WHEREAS, the City of Newburgh wishes to submit an application through the Hudson Valley Regional Councils Consolidated Funding Application process for the funding of the Newburgh Beacon Ferry Heritage Project ("Project") which would provide improved health, safety, and access to the Hudson River; and

WHEREAS, for this Project, the City will partner with the Metropolitan Transportation Authority, New York Waterways, the City of Beacon and Memorare Holdings Corp. to improve commuter, tourist and resident uses of the ferry and usage of Newburgh's public waterfront areas, improve environmental stewardship and enhance safety and security of the ferry terminal ticketing station, riverfront walkway staging area and parking lot. If awarded, funding also would be used to operate the City of Newburgh Art and History Tour bus and to provide a cost-benefit analysis study of weekend Ferry service between Newburgh and Beacon for commuter and tourist economic development; and

WHEREAS, grant funding for such Project is available and the City seeks up to one million (\$1,000,000) dollars, as follows:

TRANSPORTATION INFRASTRUCTURE/MULTI MODAL TRANSPORTATION INFRASTRUCTURE (0% MATCH)	\$750,000
GREEN INNOVATION GRANT PROGRAM (10% MATCH)	\$210,000
LWRP GRANTS (50% MATCH)	\$ 30,000
PARKS, HISTORIC PRESERVATION AND HERITAGE AREAS (50% MATCH)	\$ 30,000

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 apply for and accept if awarded a grant from New York State in the amount not

to exceed One Million (\$1,000,000) Dollars with Fifty One Thousand (\$51,000) Dollars in matching funds required to support the Newburgh Beacon Ferry Heritage Project.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

RESOLUTION NO.: 217 - 2011

OF

OCTOBER 24, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO A LICENSE AGREEMENT WITH
THE GREATER NEWBURGH PARTNERSHIP, INC.,
TO ALLOW CLEANING AND GREENING ACTIVITIES
ON SEVERAL CITY OWNED PROPERTIES KNOWN AS
THE MID-BROADWAY SITE**

WHEREAS, The Greater Newburgh Partnership, Inc. (“GNP”) is a non-profit organization created for the improvement of the City of Newburgh, the greater Newburgh area and its many stakeholders; and

WHEREAS, the City of Newburgh is the owner of several parcels of real property located at 132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as “140 Broadway”; and

WHEREAS, the City is formulating plans for the long-term redevelopment of the site but does not have the resources to clean the site in the short term; and

WHEREAS, the GNP has offered to provide services to the City by performing cleaning and greening activities for the beautification of 140 Broadway and requested access to 140 Broadway to conduct these activities; and

WHEREAS, such access to the properties requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be 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 enter into the attached license agreement with The Greater Newburgh Partnership to allow access to several City-owned properties for the purpose of performing cleaning and greening activities.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

27-11

LICENSE AGREEMENT

This Agreement, made this ____ day of _____, two thousand and eleven, by and between the GREATER NEWBURGH PARTNERSHIP, INC., with offices at _____ as "LICENSEE"; and the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR";

WITNESSETH THAT:

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

SCHEDULE "A"

132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as "140 Broadway".

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

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

First: Licensor hereby gives to Licensee, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 140 Broadway, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary; for the purposes of and to perform "greening" improvements on property owned by Licensor. No improvements other than planting beds, walkways and the installation of a fence surrounding the perimeter of the property may be erected on the premises. The erection of a fence must be in conformance with Chapter 166 of the City Code.

Second: Licensee agrees to do such work and maintain said facilities in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority obtaining any and all permits required thereby. If, in the course of performing such work, Licensee, or any employees, agents, contractors and consultants engaged by

Licensee to perform the subject work, find, uncover, identify or otherwise locate asbestos or other hazardous material, Licensee, or employees, agents, contractors and consultants of Licensee, shall immediately cease and desist from the performance of the subject work and report said findings to the City Manager.

Third: Licensor acknowledges that the use of the subject property shall inure to the benefit of both parties, and shall be satisfactory, adequate and sufficient consideration for the Licensee granted hereunder.

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

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

Sixth: This Agreement and the license or privilege term is from ____, 20__ to ____, 20__ and will be subject to renewal on mutual agreement of both parties for additional one (1) year terms each.

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

Eighth: Without limitation to the general provisions of this Agreement, it is understood and agreed that said facilities shall be installed in substantially the location and position shown in the attachments hereto, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By:

Richard F. Herbek, Acting City Manager

GREATER NEWBURGH
PARTNERSHIP, INC.

LICENSEE

By: _____

President

SCHEDULE "A"

<u>ADDRESS</u>	<u>SECTION</u>	<u>BLOCK</u>	<u>LOT</u>
132 Broadway	30	3	24
136 Broadway	30	3	25
138 Broadway	30	3	26
140 Broadway	30	3	27
140A Broadway	30	3	28
142 Broadway	30	3	29
144 Broadway	30	3	30
146 Broadway	30	3	31
148 Broadway	30	3	32
6 Johnston Street	30	3	33
10 Johnston Street	30	3	34
12 Johnston Street	30	3	35
16 Johnston Street	30	3	37
18 Johnston Street	30	3	38
6 Lander Street	30	3	23
8 Lander Street	30	3	22
14 Lander Street	30	3	21

RESOLUTION NO.: 218 - 2011

OF

OCTOBER 24, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE AN AGREEMENT WITH OLYMPIC ELECTRIC
TO SURVEY THE EXISTING ELECTRICAL
CONDITIONS AT THE CITY OF NEWBURGH COURTHOUSE
AT A COST OF SEVENTEEN THOUSAND DOLLARS**

WHEREAS, the City of Newburgh is the owner of real property located at 300 Broadway and known as Newburgh City Court; and

WHEREAS, it has become necessary to evaluate existing electrical conditions within the building to identify and determine the source of deficiencies and to obtain a proposal and estimate for corrective work that may be required; and

WHEREAS, the City of Newburgh has solicited proposals to perform these services from licensed electrical contractors; and

WHEREAS, Olympic Electric has submitted a proposal to furnish the services at the lowest cost in the amount of Seventeen Thousand (\$17,000.00) Dollars; and

WHEREAS, this Council has determined that the retention of Olympic Electric to perform these services is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an agreement with Olympic Electric in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require, to provide certain electrical services at the City of Newburgh Courthouse at a cost of Seventeen Thousand (\$17,000.00) Dollars.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

CONTRACT AGREEMENT

Agreement made this _____ th day of _____, 2011, by and between OLYMPIC ELECTRIC, registered in New York State and authorized to do business in the State of New York, and CITY OF NEWBURGH (hereinafter called the CITY).

CITY and OLYMPIC ELECTRIC agree as follows:

A. CITY and OLYMPIC ELECTRIC, for the mutual consideration hereinafter set forth, agree as follows:

A.1 The City of Newburgh Council passed resolution number _____ dated _____, 2011 authorizing the City Manager to enter into an Agreement with OLYMPIC ELECTRIC for Electrical Services to conduct a review of the existing wiring and electrical conditions at the City Courthouse located at 300 Broadway, Newburgh, NY.

A.2 The CLIENT hereby retains OLYMPIC ELECTRIC to provide professional services in accordance with the Scope of Services identified below, associated with the CITY'S Broadway Courthouse renovation, and which must be completed within 60 days of the full execution of this Agreement.

A.3 Scope of Services – The services to be performed by OLYMPIC ELECTRIC are as follows:

A.3.1 Review of the 2007 City of Newburgh Court Facility – Contract No. 4, Electrical Contract project documents for the Courthouse renovation project and compare them to the as-built installation on a room-by- room, floor-by-floor basis.

A.3.2 Record existing wiring and electrical conditions and update project documents/drawings to reflect current conditions.

A.3.3 Submit detailed report of items reviewed and tested, as built conditions, uncompleted work and identify the party responsible for any deficiencies.

A.3.4 Provide cost estimate for repairs and completion for unfinished and/or defective/deficient work.

A.4 OLYMPIC ELECTRIC shall perform its services in accordance with generally accepted professional and construction contracting practices.

B. CITY agrees to pay OLYMPIC ELECTRIC as compensation for services as follows:

B.1 CITY shall pay OLYMPIC ELECTRIC for its services provided, based on documented actual time and expenses expended by OLYMPIC ELECTRIC in performance of this Agreement in an amount not to exceed \$17,000.00.

B.2 All fees and other charges will be billed monthly unless otherwise specified in this agreement or agreed to by both parties. Fees and other charges will be due at the time of billing and paid within 30 days unless otherwise agreed to by both parties. No release of lien shall be signed unless account is paid in full.

C. CITY shall furnish the following:

C.1. Access to the Courthouse project site.

C.2 Any information regarding blueprints, drawings and specifications and any "as-built" plans of the site.

D. This Agreement includes the Additional Terms and Conditions contained in Schedule "A" attached hereto and incorporated herein by this reference.

E. The persons signing this Agreement warrants that he/she has authority to sign as, or on behalf of, the respective party.

IN ACCORDANCE WITH SECTION C8.87 OF THE CITY CHARTER, THIS AGREEMENT IS APPROVED

BY THE FOLLOWING:

MICHELLE KELSON, ESQ.
CORPORATION COUNSEL
CITY OF NEWBURGH

CHERYLGROSS
COMPTROLLER
CITY OF NEW BURGH

AGREED TO:
CITY OF NEWBURGH
Newburgh, New York 12550
Phone: (845) 569-7301
Fax:

AGREED TO:
OLYMPIC ELECTRIC
1041 Rt. 52 Suite B
Walden, NY 12586
Phone: (845) 895-4063
Fax:

By _____
: _____
(Authorized Signature/Date)

By _____
: _____
(Date)

Title Acting City Manager
: _____

Title _____
: _____

SCHEDULE A
ADDITIONAL TERMS AND CONDITIONS OF AGREEMENT

1. OWNERSHIP OF DOCUMENTS AND/OR ELECTRONIC MEDIA FILES: All tracings, specifications, computations, survey notes and media files and other original documents as instruments of service are and shall remain the property of CITY unless otherwise provided by law. OLYMPIC ELECTRIC shall not use such items on other projects without CITY'S prior written consent. OLYMPIC ELECTRIC shall not release CITY'S data without authorization.

2. LIMITATIONS OF PROBABLE COST ESTIMATES: Any prior estimate of the probable construction cost of the project or any part thereof is not to be construed, nor is it intended, as a guarantee of the total cost. However, the not-to-exceed price noted in B.1 of the Agreement is the maximum price to be paid by the City for the scope of services noted, unless the CITY, for additional consideration provided by OLYMPIC ELECTRIC, agrees in writing to pay additional compensation as authorized by an appropriate representative of the CITY.

3. TERMINATION: The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, OLYMPIC ELECTRIC shall be paid for all services properly rendered in accordance with this Agreement up to the date of termination, provided that a report of all completed and uncompleted work and services under this Agreement is submitted to the CITY, with proof of adequate support and documentation for such partial services accomplished.

4. RESTRICTIONS ON USE OF REPORTS: It should be understood that any reports rendered under this Agreement will be prepared in accordance with the agreed Scope of Services and pertain only to the subject project and are prepared for the exclusive use by the CITY. Use of the reports and data contained therein for other purposes is at the CITY'S sole risk and responsibility.

5. ASSIGNMENT AND SUBCONTRACTING: OLYMPIC ELECTRIC shall not assign any of its rights, interests or obligations under this Agreement, or subcontract any of the services to be performed by it under this Agreement, without the prior express written consent of the CITY. Any such subcontract, assignment, transfer, conveyance or other disposition without such prior consent shall be void, and any services provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

6. INDEMNIFICATION: Each party agrees to and shall indemnify and hold harmless the other, its employees, agents and subcontractors, from and against all claims, lawsuits, including those brought by third parties including reasonable attorney's fees, and losses asserted against and alleged to be caused by its performance, negligent performance or failure to perform its obligations under this Agreement. Parties agree that there are no third party beneficiaries of this contract. The rights and remedies provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or this Agreement.

7. CONTROLLING LAWS: This Agreement is to be governed by the laws of the **State of New York**.

8. INSURANCE: OLYMPIC ELECTRIC shall procure and maintain throughout the period of this Agreement, at its own cost, insurance for protection from claims under worker's compensation (with statutory limits of coverage), temporary disability and other similar insurance required by applicable State and Federal laws, and comprehensive general liability coverage (of at least \$500,000). Certificates for all such policies of insurance shall be provided to the CITY upon execution of this Agreement and prior to the commencement of any work hereunder.

9. BOOKS AND RECORDS: OLYMPIC ELECTRIC agrees to maintain, and provide to the CITY upon request, separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

10. MEDIATION: CITY and OLYMPIC ELECTRIC agree to make every effort to resolve all claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement through mediation.

11. INDEPENDENT CONTRACTOR: In performing the services and/or supplying goods and incurring expenses under this Agreement, OLYMPIC ELECTRIC shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent of the CITY. As an independent contractor, OLYMPIC ELECTRIC shall be solely responsible for determining the means and methods of performing the services, and/or supplying the goods, and shall have complete charge and responsibility for its personnel engaged in the performance of the same. In accordance with such status as independent contractor, OLYMPIC ELECTRIC covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers, agents or employees of the CITY, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY, including, but not limited to, Worker's Compensation coverage, health coverage, unemployment insurance benefits, Social Security coverage, or employee retirement membership or credit.

12. LIQUIDATED DAMAGES: Notwithstanding anything to the contrary in this Agreement, OLYMPIC ELECTRIC and the CITY recognize that time is of the essence on this Agreement and that the CITY will suffer financial loss and inconvenience to the public if the scope of the work and other obligations of OLYMPIC ELECTRIC herein are not substantially completed within the time specified herein. They also recognize that the delays, expense and difficulties involved in identifying and proving in a legal or other dispute resolution proceeding the actual loss suffered by the CITY if the scope of the work and other obligations of OLYMPIC ELECTRIC herein are not substantially completed on time. Accordingly, instead of requiring any such proof, OLYMPIC ELECTRIC and the CITY hereby agree that as liquidated damages for delay (and not as a penalty) OLYMPIC ELECTRIC shall pay the amount of \$100 for each day that expires after the time specified in this Agreement for the completion of the work and other obligations of OLYMPIC ELECTRIC.

13. NO DAMAGE FOR DELAY: Notwithstanding anything to the contrary in this Agreement, OLYMPIC ELECTRIC agrees to make no claim for damages for delay, disruption, or hindrance in the performance of this Agreement occasioned by any acts or omission to act by the CITY or any representatives or agents of the CITY, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work and/or obligations as provided herein, which shall be OLYMPIC ELECTRIC'S sole, exclusive and complete remedy in this regard.

14. EQUAL EMPLOYMENT OPPORTUNITY: OLYMPIC ELECTRIC is committed to equal employment opportunity for all persons regardless of race, color, sex, age, national origin, marital status, handicap, or veteran's status. In striving to eliminate discrimination in the workplace, it is our policy, and hereby agree, to deal only with sub-contractors, vendors, suppliers, and other affiliates who recognize and support equal employment opportunity and to comply with all applicable State and Federal Equal Employment Opportunity laws and regulations including the annual filing of Standard Form EEO-1.

15. NOTICES: All notices called for by this Contract shall be in writing and shall be deemed to have been sufficiently given or served when presented personally and when deposited in the mail, postage prepaid, certified and return receipt requested. If to the CITY: Richard F. Herbek, Acting City Manager, CITY HALL, Second Floor, 83 Broadway, Newburgh, NY 12550 with a copy to Corporation Counsel, CITY HALL, Second Floor, 83 Broadway, Newburgh, NY 12550. If to OLYMPIC ELECTRIC: Michael Mahood, OLYMPIC ELECTRIC, 1041 Route 52, Suite B, Walden, NY 12586.

16. ENTIRE AGREEMENT: The rights and obligations of the parties, and their respective agents, successors and assigns, shall be subject to and governed by this fully integrated Agreement, including this Schedule A, which supersedes any other understandings or writings between or among the parties occurring contemporaneously with, or prior to, this Agreement.

17. MODIFICATION: No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. As a condition precedent to any payments due OLYMPIC ELECTRIC in connection with any changes in the scope of the work or otherwise to this Agreement the City Manager for the CITY must, prior to the performance of any such changes in the scope of the work or otherwise, authorize an addendum or change order to this Agreement, which shall specifically set forth the

scope of such extra or additional work and the amount of compensation and the extension of the time for performance, if any, for any such altered scope of work, or other modifications to the Agreement. Any changes, amendments or modifications to this Agreement shall not be binding, and no payments by the CITY due in connection therewith are enforceable, unless such prior authorization by the City Manager is obtained. Unless otherwise specifically provided for in such addendum or change order, the provisions of this Agreement shall apply with all force and effect to the terms and conditions contained in such addendum or change order.

RESOLUTION NO.: 219 - 2011

OF

OCTOBER 24, 2011

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN ORDER ON CONSENT WITH THE
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION TO RESOLVE VIOLATIONS FOR THE WASTEWATER
TREATMENT PLANT IN CONNECTION WITH THE GRAVITY BELT
THICKENER AND THE CSO LONG TERM CONTROL PLAN**

WHEREAS, the New York State Department of Environmental Conservation ("NYS DEC") inspected the City of Newburgh Wastewater Treatment Plant and found violations in connection with the Gravity Belt Thickener and the CSO Long Term Control Plan regulations issued under Article 17 of the NYS Environmental Conservation Law; and

WHEREAS, an Order on Consent has been offered by the NYS DEC to resolve the violations with the payment of a civil penalty not to exceed \$1,000.00 which is payable upon the signing of the Order on Consent; and

WHEREAS, this Council has determined that entering into the proposed Order on Consent 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 hereby is authorized to enter into the proposed Order on Consent, in substantially the same form as annexed hereto and made part hereof with other provisions as Corporation Counsel may require, and to take such additional and further action effectuate the terms of the proposed Order on Consent.

Michelle Kelson, Corporation Counsel, explained that there will be a one time penalty payment of \$1,000.00 when both parties sign the Consent Order. The more expensive penalty of \$16,000.00 will be suspended under the conditions that the City abide by the time line that we agree to in the Consent Order for actually doing the investigation, designing, manufacturing and implementation of the improvements and then provide for additional daily penalties if we are unable to meet the time line in the Consent Order.

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

Ayes - Councilwoman Angelo, Councilwoman Bell, Councilwoman Bello, Councilman Dillard, Mayor Valentine - 5

ADOPTED

219-11

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of Article 17 of the
Environmental Conservation Law of the State of New
York and Title 6 of the Official Compilation of Codes, Rules
and Regulations of the State of New York, by

ORDER ON CONSENT
Case No. R3-20110107-17

City of Newburgh,

Respondent.

(Orange County)

WHEREAS:

1. The Department of Environmental Conservation is a Department of the State of New York with jurisdiction to enforce the environmental laws of the State pursuant to Environmental Conservation Law ("ECL.") § 3-0302.

2. The Department is responsible for the administration and enforcement of laws, regulations and management of Water Pollution Control and the State Pollutant Discharge Elimination System ("SPDES") and permits issued thereunder, pursuant to ECL Article 17 and 6 NYCRR Parts 700 et seq. and 750 et seq.

3. Respondent City of Newburgh is a Municipal Corporation with offices at 83 Broadway, Newburgh, New York, and is the owner of a wastewater treatment plant, located at Renwick Street, Newburgh, New York (the "Facility").

4. The City of Newburgh entered into a Consent Order (R3-20040930-145) regarding the facility. In the Consent Order, the City had agreed to a scheduled date of December 31, 2008 for construction of a gravity belt thickener. To date, the Respondent has not constructed the gravity belt thickener and is thus in violation of the Consent Order.

5. Respondent has been issued SPDES permit NY #0026310 for operation of the facility. The SPDES permit required submission of a Phase I Long Term Control Plan ("LTCP 1") by the original date of October 1, 2009; this date was extended to October 1, 2010 through a modified permit. To date the Respondent has failed to submit the LTCP 1 and is thus in violation of the requirements set forth in the SPDES permit.

6. Pursuant to SPDES permit NY #0026310, a semi-annual report for the Phase I LTCP was due to be submitted to the Department by December 1, 2010. The Respondent failed to submit the semi-annual report by December 1, 2010 and violated the requirements set forth in the SPDES permit.

7. 6 NYCRR 750-2.4(g) states that any person who fails to perform any duty imposed by Titles 1 through 11 inclusive and title 10 of Article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable to a penalty of not to exceed twenty-five thousand dollars per day for each violation.

8. ECL § 71-1929 provides that a person who fails to perform any duty imposed by Titles 1 through 11 inclusive and title 19 of Article 17, the rules and regulations promulgated thereunder, or orders or determinations of the commissioner promulgated thereto, shall be liable for a penalty of not to exceed thirty-seven thousand, five hundred dollars (\$37,500) per day for each violation, and may be enjoined from any continuing violation.

9. Respondent admits these violations and affirmatively waives the right to a public hearing in this matter in the manner provided by 6 NYCRR Part 622, consents to the issuing and entering of this Order, agrees to be bound by the terms, provisions and conditions of this Order, including the Compliance Schedule attached hereto, and waives the right to a public hearing in

any matter that may arise under the terms of this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. **Civil Penalty.** A. **Payable penalty.** Respondent shall be liable to pay a civil penalty in the amount of sixteen thousand (\$16,000.00) dollars, one thousand (\$1,000.00) dollars of which is payable to the Department upon Respondent's return of an executed copy of this Order to the Department. The DEC case number appearing on the first page of this Order shall be endorsed on the face of the check. The civil penalty shall be paid by check, bearing the signature of Respondent, made payable to the "Department of Environmental Conservation" and forwarded to the Regional Attorney, New York State Department of Environmental Conservation, Region 3, 21 South Putt Corners Road, New Paltz, NY 12561.

B. **Suspended penalty.** The remainder of the penalty, fifteen thousand (\$15,000.00) dollars, is suspended provided Respondent strictly adheres to the terms and conditions of this Order, including the Schedule of Compliance, attached hereto as "Schedule A". If Respondent violates any term of this Order, including the Schedule of Compliance, the whole amount of the suspended penalty, or any portion thereof, shall be due from Respondent within 30 days of receiving written notice from the Department that penalties are due. The determination of the suspended penalty amount due shall be in the Department's sole discretion.

C. **Stipulated Penalties**

In the event that Respondent fails to strictly and timely comply with any provision of this Order, and the annexed Schedule of Compliance, a stipulated penalty shall be due and payable as follows:

1 st through 30 th day, per day of Violation	\$500.00
31 st through 60 th day, per day of Violation	\$1,000.00
Each day of Violation thereafter	\$1,500.00

In the event that the Department determines that Respondent has violated any provision of this Order, the Department may serve upon the Respondent a notice of noncompliance, as described in Paragraph III below, which shall set forth the nature of the violation(s) and the calculation of stipulated penalties due. Such notice shall be deemed a part of this Order. Respondent shall deliver the full stipulated penalty amount to DEC within 10 business days after receipt of such notice. Neither the Department's demand for payment of a stipulated penalty, nor Respondent's payment thereof, shall discharge Respondent from the obligation to comply with any obligation established under this Order. The payment of stipulated penalties, as set forth above, shall not limit the Department's right to seek such other relief as may be authorized by law. Respondent's liability for the additional penalties provided by this paragraph shall be extinguished when the Department shall concur in writing that Respondent has completed implementation of the Schedule of Compliance annexed hereto and if Respondent is otherwise in compliance with this Order as of that date.

II. Schedule of Compliance.

Respondent shall strictly comply with the terms of this Order and with the attached Schedule of Compliance, including any report(s), plan(s), proposal(s) and other submissions made pursuant thereto. The Schedule of Compliance and all such submissions are hereby deemed incorporated into this Order, upon approval by the Department if such approval is required, and shall be fully enforceable as part of this Order.

III. Notice of Noncompliance.

In the event that the Department determines, in the Department's sole discretion, that the Respondent has failed to timely and fully comply with any provision of this Order, the Department may serve upon the Respondent a notice of noncompliance setting forth the nature of the violation(s). Service of such notice may be by personal service or by certified mail return receipt requested (restricted delivery not required) at the Respondents' address as specified in Paragraph 3 of this Order, or, if such service is refused or cannot be completed, by ordinary mail.

IV. Full Settlement.

Until fully remediated in accordance with this Order, all violations described above shall be considered continuing violations. The Department shall not institute any action or proceeding for penalties or other relief for the violations described above other than those actions and penalties set forth in this Order, for so long as Respondent remains in compliance with this Order. Any failure by Respondent to comply fully with the terms of this Order may subject the Respondent to further enforcement action for the violations described above. Compliance with this Order shall not excuse nor be a defense to charges of any violations of the ECL or any regulation or permit issued thereunder, which may occur subsequent to the date of this Order.

V. Submission.

All reports and submissions required in this Consent Order shall be submitted to the Department, via U.S. Mail, as follows:

a hardcopy original and an electronic copy in .pdf format on Compact Disc to:

Regional Water Engineer
Division of Water
New York State Department of Environmental Conservation, Region Three
100 Hillside Avenue, Suite 1W
White Plains, New York 10603
Re: Case No. R3-20110107-17

and an electronic copy in .pdf format on Compact Disc to the:

Regional Attorney
Office of General Counsel
New York State Department of Environmental Conservation, Region Three
21 South Putt Corners Road
New Paltz, New York 12561
Re: Case No. R3-20110107-17

Respondent shall be responsible for the content of any submissions made pursuant to this Order and shall certify in writing to the Department that such submission complies with the requirements set forth in this Order. Submission of any material containing assertions of fact shall be considered an affirmative representation by Respondent of the truth of such assertions. Respondent shall be in violation of this Order if any submission is of such poor quality that it does not constitute a good faith effort to comply with the provisions of this Order.

VI. Review of Submitted Remedial Plans and Proposals.

After review of any remedial plan or proposal required by this Order and its Schedule of Compliance, the Department shall notify Respondent, in writing, of its approval or disapproval of the submission. If the Department approves the submission, Respondent shall implement it in accordance with its schedule and terms, as approved. If the Department disapproves the submission, the Department shall provide to Respondent written notice of its disapproval, specifying with reasonable particularity the grounds for disapproval. Within 30 (thirty) days after Respondent receives written notice of disapproval, Respondent shall submit a revised submission which fully responds to each of the Department's specified grounds for disapproval. After the Department's receipt of Respondent's revised submission, the Department shall notify Respondent, in writing, of its approval or disapproval. If the Department approves the revised submission, Respondent shall implement it in accordance with its schedule and terms, as approved. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by

DEC to make it approvable. If the Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submission, the Respondent shall be in violation of this Order. Upon Department approval, a submission or revised submission shall be deemed incorporated into this Order.

VII. Notice of Work.

Respondent shall provide notice to the Department of any excavating, drilling, sampling, construction or start-up of equipment to be conducted pursuant to the terms of this Order, if any, at least five (5) working days in advance of such activities.

VIII. Inspections.

For the purpose of insuring compliance with this Order, and with applicable provisions of the ECL and regulations promulgated thereunder, representatives of this Department shall be permitted access to the facility and to relevant records during reasonable hours to inspect and/or perform such tests which the Department deems appropriate to determine the status of Respondent's compliance.

IX. Conveyance.

In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Facility, Respondent shall, not less than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

X. Other Approvals.

Respondent shall be obligated to obtain whatever permits, easements, rights of entry, approvals or authorizations may be necessary in order to carry out its obligations under this Order.

This Order shall not relieve the Respondent of the obligation to comply with any other laws, rules or regulations of the State of New York or any other governmental authority which are applicable to Respondent's activities, nor preclude or limit such enforcement action as may be authorized by law for any such violation.

XI. Other Remedies; Natural Resource Damages.

(a) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) the Department's right to enforce, administratively or at law or in equity, the terms, provisions and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof; (3) the Department's right to bring any action, administratively or at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns which the Department could otherwise maintain with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of wastes from the site or from areas in the vicinity of the site, or to require that Respondent take such additional measures as may be necessary for the protection of public health or the environment, including interim remedial measures; (4) the Department's right to commence any action or proceeding relating to or arising out of any disposal of hazardous wastes at the site, as those wastes are defined by applicable regulation; or (5) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law.

(b) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights or authorities, including the right to recover natural resource damages, against any party, including Respondent.

(c) This Order shall not be construed to prohibit the Commissioner or the Commissioner's duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XII. Indemnification.

Respondent or any successors, assigns or transferees, shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XIII. Force Majeure.

Respondent shall not be in default of compliance with this Order to the extent that Respondent may be unable to comply with any provision of this Order because of the action of a national or local government body or court, an act of God, war, strike, riot or catastrophe as to any of which the negligence or willful misconduct on the part of Respondent was not a proximate cause; provided, however, that Respondent shall use its best efforts to comply. Respondent shall provide written notice to the Department immediately upon obtaining knowledge of such event. In addition, Respondent shall, within twenty one days of such event, provide written request to the Department for an appropriate extension or modification to this Order, along with documentation evidencing entitlement to relief herein. Relief under this clause shall not be available to Respondent, with regard to a particular event, if Respondent fails to provide timely notice of such event. The Respondent shall have the burden of proving entitlement to relief under this clause, by clear and convincing evidence.

XIV. Modification.

This Order may not be modified except in a writing executed by the DEC Commissioner or the DEC Commissioner's authorized representative.

XV. Default.

The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, and may constitute sufficient grounds for revocation pursuant to 6 NYCRR 621.13 of any permit, license, certification or approval issued to the Respondent by the Department.

XVI. Entire Agreement.

The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the violations set forth above. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing pursuant to Paragraph XIV hereof. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XVII. Binding Effect.

This Order shall be deemed to bind the Respondent, its officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for Respondent, including, without limitation, any subsequent operator of the Facility who may carry on activities now conducted by Respondent at the Facility, and any successor in title to the Facility or any interest therein. Respondent shall provide a copy of this Order (including any submissions incorporated herein) to any contractor or subcontractor hired to perform work required under this Order, and shall require compliance with this Order as a term of any contract for

performance of work under this Order. Respondent shall nonetheless be responsible for ensuring that all work performed under this Order is in compliance with the terms of the Order.

XVIII. Effective Date.

This Order shall not become effective until it is signed by the Regional Director on behalf of the Commissioner.

Dated: New Paltz, New York
_____, 2011

JOSEPH J. MARTENS
Commissioner
Department of Environmental Conservation

By: _____

WILLIAM C. JANEWAY
Regional Director, Region 3
Department of Environmental Conservation

This Order on Consent has been reviewed and approved by the Regional Attorney as to form.

By: _____

JOHN L. PARKER
Regional Attorney

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry to this Order without further notice, waives its right to a hearing in this matter, and agrees to be bound by the terms, conditions and provisions of this Order. The undersigned represents and affirms that they have the legal authority to bind Respondent to the terms and conditions of this Order.

Newburgh, City of

By: _____
Name: _____
Title: _____

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

On the _____ day of _____, 20____, before me, the undersigned, personally appeared _____, 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/she executed the same in his/her capacity as shown in the instrument, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

SCHEDULE OF COMPLIANCE

Respondent: City of Newburgh Wastewater Treatment Plant
Site or Facility: Renwick Street, Newburgh, New York
DEC Case No.: R3-20110107-17

RESPONDENT IS REQUIRED TO SELF-CERTIFY TIMELY COMPLETION OF EACH OF THE ACTIVITIES REQUIRED BY THIS SCHEDULE.

1. Respondent shall immediately cease and desist from any and all future violations of the New York State Environmental Conservation Law and the rules and regulations enacted pursuant thereto.
2. **Self-certification:** Respondent shall submit to DEC, within fifteen (15) days of each milestone date set forth in this Schedule of Compliance, a signed statement certifying that the work required was completed by that date, and that the work was done in the manner required by this Order.

Submission of the required certification shall be considered an affirmative representation by the Respondent of the truth of its contents. Any false statement made therein shall be punishable pursuant to Section 210.45 of the Penal Law, and as may be otherwise authorized by law.

Failure to submit a required certification by the due date shall be a violation of this Order, and shall establish a legal presumption that Respondent has failed to comply with that requirement of the Schedule.

All technical submittals to the Department required under this Order shall be made by Respondent as follows:

All submittals, which shall include a hardcopy original and an electronic copy in .pdf format on Compact Disc shall be submitted to the Department, via U.S. Mail, to:

Regional Water Engineer
NYS Department of Environmental Conservation
100 Hillside Avenue, Suite 1W
White Plains, NY 10603-2860

SCHEDULE OF COMPLIANCE, continued

Respondent: City of Newburgh Wastewater Treatment Plant
Site or Facility: Renwick Street, Newburgh, New York
DEC Case No.: R3-20110107-17

3. **Remedial Activities and Milestones:** Respondent shall timely perform the activities set forth below in a good and workmanlike manner and supply all required labor, equipment and materials at Respondent's own cost and expense:

- a. By June 1, 2012, Respondent shall submit to the Department for approval an Engineering Report, Plans and Specifications, prepared and certified by a Professional Engineer licensed to practice in the State of New York, to upgrade the belt filter press.
- b. Within 120 days of Department approval of the Engineering Report, Plans & Specifications, Respondent shall bid and award construction contracts and issue a Notice to Proceed.
- c. Within 12 months of the Issuance of Notice to Proceed, Respondent shall complete the construction of the upgrade to the belt filter press.
- d. By November 1, 2012, Respondent shall upgrade the generator and electrical system to supply power to all critical unit processes, including the primary treatment, secondary treatment and the disinfection systems.
- e. By January 15, 2013, Respondent shall submit to the Department for approval a Professional Phase I Long Term Control Plan, prepared and certified by a Professional Engineer licensed to practice in the State of New York, in accordance with the Long Term Control Plan conditions in SPDES permit NY 0026310 for the City of Newburgh, last modified on 05/01/10. Respondent shall submit semi-annual progress reports to the Department in accordance with the SPDES permit conditions.

COMMENTS FROM THE PUBLIC REGARDING GENERAL MATTERS

Michael Gabor, City of Newburgh, said that his idea of Counsel is if he is making deals and he needs legal advice that is what he would depend on a Lawyer for. Taylor Biomass is now looking at Ulster County communities to sign his contract for twenty years and the City of Newburgh was the only one that signed it. If it was such a good deal, why didn't the other communities sign it? He thinks that there are some legal issues in that contract and we haven't heard what they are. Also, the Mayor made a statement at the beginning of the meeting regarding a statement made at the last City Council meeting and again, we have Counsel for a reason which is to tell us whether or not what we are doing is legal. The way that this blew up unnecessarily is very troubling to him.

Denise Ribble, City of Newburgh, said that she was happy to hear that the Council approved Phase 2 of the Armory Project at the Work Session but she wonders how the Council approved it without bringing it to a vote. She is also concerned with the Taylor Biomass contract. Have we signed on the dotted line and what is it going to cost the taxpayers who are paying for that? That coupled with the fact that we haven't moved on any of the suggestions that were made, including by Mr. Garrison, to do things that would improve our own sanitation service. Perhaps instead of buying trucks we could be looking at leasing trucks and that way we wouldn't have to pay so much for the maintenance of these trucks. There were two very good suggestions brought up by the public and Mr. Garrison regarding once a week pickup for certain areas and every day pickup for Broadway. She thinks that we have to look at that as well as how we can get some of our white and brown goods picked up off of the streets with efforts in addition to when we have Jim Taylor doing pro bono dumpsters for us. She has nothing against that but we need to have a sustained effort and a sustained look at what can be done. She added that she feels a little discouraged because she thinks that disagreement and dialogue is important but there is a difference between disagreement and violating the law. She really is disappointed that we couldn't have disagreement and discussion and dialogue instead of legal violations of the Open Meetings Law and the US Constitution. She values the people who have gone before her who have died for her right to get up here and talk and we have to respect that.

Mayor Valentine noted that there is no need for a resolution on what we are doing at the Armory because it is an update and a continuation of an agreement that we already have.

Barbara Smith, Powell Avenue, asked for a clarification on resolution #214-11. Does this mean that the original fifteen officers that we were thinking about laying off are not going to be laid off?

Mayor Valentine said it does not mean that. The City Manager is negotiating with PSOA, PBA and CSEA. By making this agreement with PSOA we believe we can probably save two to four of the fifteen. Right now we think that two of the four are going to take this proposal but if four take it then the math changes. If we can get some of the senior positions to take their retirement then we can save some of the lower positions but the exact number we don't know as of yet because they are still in negotiations.

Barbara Smith continued that in regard to resolution #218-11, as new as this building is, why are we paying for a survey of existing electrical conditions?

Michelle Kelson, Corporation Counsel, said that the electrical contractor that was awarded the bid to do the work at the Courthouse went bankrupt. We have identified a significant number of problems of the electrical variety and we have a claim against the City for the money that we are holding from that original contractor. The only way we will figure out what went wrong and what we need to do to fix it is to have a survey done to see what was in the original specifications and compare it to what is existing to try to figure out what we need to repair. We need to have this survey done and from that we will have a report with a plan and proposal to make those further corrections.

Barbara Smith added that considering the fact that you rescinded a statement and you have decided to go backwards she called upon her Councilperson to please return to the table and work for the people of the City of Newburgh. If everything else has been rescinded, will you also rescind your thoughts and come back to the table because we really need you.

Janet Gianopolous, City of Newburgh, said that in regard to the Charter if there is a lack of clarity about the punishment of a Council person regarding refusing to attend meetings, then the Charter needs to be clarified so that we don't come upon this problem again and people are clear about their duties. In regard to resolution #215, at the Work Session there was a good deal of optimism regarding the proposed plans and the notion of going back and proceeding to request an RFP that involved variations of proposals instead of just one theme. She hopes that we don't wait until we hear about the seven million dollar grant and their results because there are aspects of this that are great and we should proceed to explore. In regard to CDBG, she said that it goes for anything but she senses that there is a lack of clarity with the public

about what is being done. She feels that this could be avoided if there was more of a flow chart about what will be done.

Judy Kennedy, 162 Grand Street asked for more clarity about the electrical survey concerning electrical issues at the Courthouse. She asked if this means that they have now found improper wiring at the Courthouse.

Michelle Kelson, Corporation Counsel, said that they have received complaints about some things that are not working so they are hiring someone who will be able to answer these questions.

Acting City Manager, Richard Herbek, said that we are also in litigation and we need this report. There is a lot of money tied up with this so it is critical to get this information so that the City comes out on the winning end instead of the losing end.

Judy Kennedy said that she would fully support a complete inspection of the Courthouse as well as City Hall for any contractor who has done work.

Acting City Manager, Richard Herbek said that this has nothing to do with City Hall; this only deals with the City Courthouse.

Mayor Valentine said it only deals with the Courthouse because the electrical contractor went bankrupt during this process so we have to deal with it in a legal way.

Michelle Kelson, Corporation Counsel said that the only way to protect the City's interest in this is to do our due diligence.

Judy Kennedy said that she does support us going after this because we spent a lot of money on that Courthouse. In regard to #214-11, it sounds like we are still close to laying off eleven to thirteen police officers. She would like to know if they have come to the table to talk about not having pay raises and keeping these officers instead, etc. She knows that they are still in discussion but how is that discussion along those lines going.

Acting City Manager, Richard Herbek, said that they are in mediation with the PBA and they can't get into open negotiations with the Press and the public because it just doesn't work that way. He is still hopeful that they will be able to work it out but there is a long way that they need to go with the PBA. The mediation is scheduled for November 4th and they will be meeting with the City Council on November 9th so we are headed down a path where ultimately the Council will have to vote on a Budget on November 28th which is the deadline. He doesn't want to get into any of the details of what the key

points are but we are working in a direction of trying to save as many of the positions as we can, if we can.

Judy Kennedy ended by saying that she truly supports resolution #215-2011 that was brought up and discussed at the Work Session.

Mayor Valentine said that in Budget negotiations that the City Council has had with the City Manager we have been looking for just what we have achieved with PSOA. We said that we need to save "x" amount of dollars from PSOA which comprises of about fifteen officers and we need a certain amount from PBA that comprises of a number of officers and when you add them together with the savings we could possibly get to the point where there will be no layoffs. That is the ultimate goal but we don't know if we can achieve it. The Council has said that they will do this under the 2% cap so it is up to the City Manager and Unions to hammer out how they can achieve the other objectives. He thanked and congratulated PSOA because they came forward with some ideas for savings and ways to protect the officers in their levels. Now we have to look at PBA and CSEA and we have mediators who are stepping forward offering to help us to try to facilitate agreements. All of those people working together will hopefully come up with a formula that works that their memberships can accept and that the Council can work with. This is not unusual because most of the time these things happen in the eleventh hour just like last year with the Firemen. They are hopeful and mildly optimistic because the Council doesn't want to see anyone laid off in the police department.

Timothy Hayzill, 122 Johnston St., said that he has a problem with resolution #210-11 expressing conceptual support for the application of Mountco Construction and Development Corp. He asked if Mountco has the inside scoop with City Hall because these are the same people that she went to court for to get Burton Towers. Here they are with more work and no one is talking about their history of not hiring people in the City of Newburgh which makes him think that the Council doesn't think about the residents that live here.

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

Acting City Manager, Richard Herbek said in regard to Taylor Biomass that some people don't understand the agreement that we reached. The agreement provided for our being able to take our solid waste to Taylor Biomass for \$65.00 a ton, which is a bargain because we are now paying around \$80.00 a ton. He doesn't know all of the difficulties that Taylor Biomass is having but he is still hopeful that they will be successful and that the plant will at some point become operational. It appears to be a state of the art method of solid waste disposal and he thinks that the sooner they get all of the funds and energy credits that they need in order to pull this off that it could be good for not only the City of Newburgh but the entire Region. We did enter into an agreement that was approved by a majority of the City Council and if it never opens up we are no better or worse off than we are today. Another provision we added into the agreement is a *Favorite Nations Clause* so who every signs up with whatever other favorable clauses we would get the benefit of. He still thinks it was good for us to do and that if it does open it will be beneficial to the City in terms of solid waste disposal and he hasn't changed his mind one bit. It may be that the City of Newburgh is the only signer but if they are able to pull this off then they will get other signatories and he thinks that we are in the driver's seat.

COMMENTS FROM THE COUNCIL

Councilwoman Angelo reminded everyone that the Citizens Advisory will be sponsoring the Charter Review Commission at their next meeting. She thanked our committee for the five wonderful days that we had on the Waterfront. She said that yesterday we had two buses pull up with Japanese people from New Jersey and they went out on the Pride of the Hudson. She added that she would like to recognize Rev. Mark Connell with San Miguel Academy and also the Pop Warner Newburgh Steelers. If we could come up with two certificates to honor them, that would be great. She saw the article about the IDA with the Armory and there were a group of Sailors at the Waterfront who told her that they were stationed at the Newburgh Armory. She asked the City Manager if they could get some kind of list of who the tenants are in that building.

Mayor Valentine said that what we might need are some more regular updates on what the Armory Unity Center is doing. Only because he was asked a question a day when they were doing a run in partnership with the Newburgh Y and he had no idea that it was happening. They should know about these things because they might want to show up and they should know what is happening there.

Councilwoman Angelo asked if there is a newsletter or coming events calendar.

Acting City Manger, Richard Herbek, said that the problem right now is that there is only one employee but he is sure that they can solve the problem of keeping them more informed.

Councilwoman Angelo said that she is going to bring it up to the Chairman of the Citizens Advisory that maybe they can do a community calendar. Maybe they could get one of the newspapers to sponsor it because it used to be done by the Chamber of Commerce. She added that there was an article in the paper about the Youth Court which we used to have and it worked effectively so if she can get some more information on it then maybe we may want to implement that again. She thanked everyone for coming and said it was a good meeting.

Councilwoman Bell said to her colleagues at the table that she knows she has to let things go and move on but she feels a little bit disappointed that the statement from the Mayor rescinding the previous statement was based on

the fact that we didn't want to spend any more money for legal fees and that was the only reason. She doesn't think this is right because she would expect her colleagues to say, "We stringently and stridently disagree with your position, however, we realize that we overstepped our boundaries and took some actions that were not legal and for that we are sorry". That would have shown humanity and that they had learned something because otherwise they will do the same thing over and over again. The reason why she brought this forward is because we don't respect process and when we don't we break laws, bend rules and things get really messed up. On September 21st, when she made the statement that she was going to withdraw from the Budget process she also followed it up with a Press Release so that everyone would be informed. Many people responded to her saying that they understood and only one person told her that they understand her frustration but she needs to be there so she can hold their feet to the fire, which was the only negative comment. A colleague also e-mailed her asking if she would consider coming to the sessions. The issue for her was around a letter that was sent on June 1st to Mr. Valentine and Mr. Herbek from Senator Larkin where he stated a proposal for some efforts that would help us out of these dire straights in terms of the Budget. The Council didn't have to go along with it, and she is only one person, but once again it is a violation of process because she as a Council member wasn't informed of this at all. When she called Senator Larkin's office asking if anything was going to be put forward, she was informed that a letter had been sent to the Mayor and the City Manager on June 1st. On June 7th, the Manager and Mayor, without ever consulting anyone else on the Council, wrote a letter back to Senator Larkin saying that we have considered this but no thank you. We have to respect process. This is not the Wild Wild West and it is no one's Kingdom or Domain where they can just do whatever they please. We have to follow a process. She told Barbara Smith that she is considering returning to the process but it is so frustrating to her that some people can just throw something in the trash; the same people that can not even be human enough to say that they wronged someone and they are sorry. She knows that we can do better. She thanked everyone.

Councilwoman Bello thanked everyone and wished them a good evening.

Councilman Dillard reminded everyone that on November 1st and 3rd from 5:00 p.m. to 6:00 p.m. at the Powelton Club there will be a presentation from the Land Bank Committee. At these meetings you will get a full understanding as to the efforts of the Land Bank. He asked everyone to pass this information on to their neighbors and colleagues because this is very important for the City of Newburgh. He would also like to have that same presentation at a local venue.

Mayor Valentine said that this is the last meeting before the Election so he wanted to put his pitch out there for the Charter Review. As everyone knows, this has been a passion of his since he became Mayor. They tried one time before but it never made it to the voters, which is a shame because it also had good points to it. This particular Committee, although they were appointed by him as Mayor, the City Council members all had input on who was on it. In fact, anyone who put their name in was accepted. No one was refused to be on the Charter Review Commission. They worked very hard and their meetings were sometimes quite feisty but they made what he believes are very good recommendations and a pretty good compromise to what was proposed a couple of years ago. He thinks that the split of the At Large and Wards is a very positive move for Newburgh. The increase from five to seven is not a Budget breaker. It is certainly a little more money but he thinks it offers greater representation. So many times they have said that the City Council is run by three people not five because three votes are all you need to pass something. He also thinks that the calls and comments that they receive saying that parts of the City are not represented would never be the case once this is implemented because there would be people from every neighborhood. Those serving in the Ward Districts would have a manageable constituency to answer to and to help and work with. He also thinks it gets us away from possible problems of whether we are truly representative of the City. It has never been brought to any legal standpoint or challenge but At Large does not necessarily mean that you represent everyone here. We have had City Council's where three members lived on one block and we currently have two members living in the same development. This was a very good proposal and change and the people that worked on this worked very hard. Their hearts were in the right places and their thoughtfulness in putting together recommendations were there. Like anything else it is up to the voters and whatever happens on this in November the City has spoken. If it is voted up, he will be pleased because he thinks it is something that could move the City forward. If it is voted down, you can get up to the microphone as much as you want but once it comes to the voters at large then it is the voters who speak. He reminded everyone that this is on the other side of the Ballot so please remember to look on both sides when you vote. Up or down, whatever you vote is up to you. He added that he will miss Election night because it has been an amazing thing to be part of and there is nothing like it when you are a Candidate. He wished everyone the best and hopes that the citizens truly choose who they think are the best people to lead this City going into next year. He wished everyone a good evening.

There being no further business to come before the Council, the meeting adjourned at 8:50 p.m.

LORENE VITEK
CITYCLERK

