

**CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY ("IDA")  
MINUTES OF MEETING  
January 15, 2013**

**Present**

Board Members: Joshua Smith, Chair  
John Penney  
Michael Curry  
Jerry Maldonado  
Nancy Billman  
Sean O'Shea  
Excused Absence: Richard Bedrosian  
Counsel: Thomas Whyatt, Esq., Counsel  
Staff: Theresa Waivada, Executive Director  
Craig Skelly, CFO

1. **Roll Call** Mr. Smith called the meeting to order at 7:00pm. A quorum was present.
2. **Proof of Notice of Meeting.** Accepted.
3. **Approval of Minutes of December 17, 2012 Monthly Meeting**

Mr. Penney: Motion to Adopt the December 17<sup>th</sup> Minutes.  
Mr. Curry: Motion Seconded  
**VOTE: Unanimously adopted.**

**4. Communications:**

- Empire State Development notified us of the annual IDA allocation permitted to issue in bonds, which for 2013 is \$459,482.
- ATT's consultants are requesting a building permit to upgrade technology. The Board needs to give its Owner's Authorization in order for them to go before Zoning. There were no communications other than invoices and bank statements.

Mr. Maldonado: Motion to authorize the Executive Director to complete any necessary forms with the Codes Department to enable cell tower permitting.  
Mr. Penney: Motion seconded  
Discussion: None  
**VOTE: Unanimously approved.**

**5. Bills and Treasurer's Report.** Mr. Curry presented the Treasurer's report (ending balance of \$731,071.34 and requested a motion to approve payment of five invoices as presented.

Mr. Penney: Motion to approve 5 checks as presented.  
Mr. Maldonado: Motion Seconded.  
Discussion: None  
**VOTE: Unanimously approved.**

**6. Report from the Chair.** Mr. Smith explained the background regarding Resolution #2013-1-15-2 to endorse the Quassaick Creek Watershed Alliance environmental justice grant application to stabilize the banks of the stream. The Alliance is taking an extensive look at Muchattoes Lake and the Quassaick Creek

corridor. Mr. Smith recommends approving the Resolution. He encouraged board members to join the Business and Professional Association tour of Quassaick Creek this Spring.

NYS DEC will be assisting the City in rebuilding sewer lines along Rt 9W. Mr. Smith said that water is flowing through Silver Stream and Murphy's Ditch. He explained how Economic Development and clean water are linked and why clean water and water supply are so important to continued growth in the City.

Mr. Penney: Motion to approve Resolution #2013-1-15-2

Ms. Thomas: Motion seconded

Discussion: None

**VOTE: Unanimously approved.**

## **7. Report from the Executive Director:**

- City sent a letter to vacant industrial and commercial properties owners requesting their interest in leasing or selling their properties.
- Continuing to work on data on labor and workforce. Also downloading business data for marketing. Reviewing a 2001 Economic Development Strategy to formulate a realistic strategy for the Agency.
- In discussion with NCAC on the progress of Hudson Valley Lighting project. Once project enters Brownfield Clean-up Program, NCAC and IDA will contact the Department of State regarding changing the BOA application to tasks that will facilitate the project.
- Will be attending NYS Economic Development Conference next week in Albany.
- Main Street Program application for upper Broadway was not approved. Once the economy improves, our Small Business Program can be helpful to retailers interested in undertaking façade improvements.
- Mr. O'Shea asked about signage programs, and there was a discussion of how a Main Street Program could enhance the looks for small businesses. Related discussion of the parking lot behind the Fire Station on upper Broadway and that it needs to be more accessible. Mr. Smith noted that the West Street parking lot is empty now.
- There will be a meeting with TSEC and the person that they have hired to undertake marketing the City. She cited the need for tourism marketing as well.
- Met with owners of Torches Restaurant about expansion of their business to permit catering events.
- Spoke with Mr. Kaufman of Leyland regarding their plans for potential development of a parcel of land north of the Orange County Community College campus.

## **8. Reports of Committees**

**Audit Committee:** The Committee reviewed the Internal Control Policy changes that were proposed in December, and recommended adoption by the Board.

Mr. Penney: Motion to adopt the Internal Control Policy for 2013.

Mr. O'Shea: Motion seconded.

Discussion: None

**VOTE: The Internal Control Policy is unanimously adopted.**

2012 audit update: Mr. Curry reported that paperwork is being exchanged with the auditors BST, and BST will be at IDA's office on March 4 for field work. Audit must be completed and posted with the ABO and our Website by March 31.

**Governance Committee:** There was no meeting. Policies for 2013 will be re-adopted at the February meeting.

**9. Old Business.** Mr. Whyatt reported that there are a number of things regarding Hudson Valley Lighting happening this month which might entail an extra meeting to authorize the BCP Application. HV Lighting intends to submit the cleanup application 10 days ahead of Feb 7<sup>th</sup> when DEC makes its decision. The IDA must obtain a "Right of Access" to a portion of city property. Due to changes in the property to be utilized for the Hudson Valley project, the City Council (on Jan 28<sup>th</sup>) will amend it the parameters of the transfer of city property to the Agency.

Mr. Whyatt reported that DEC representatives were encouraging about this project. Mr. Whyatt explained why an amendment to the original agreement is necessary to drop a property swap with the City. The Board reviewed the changes to the property transfer which now will only annex a portion of the City's property to the IDA as shown on attached map, and a revised Short form EAF and Negative Declaration. He presented Resolution #2013-1-15-1.

Mr. Curry: Motion to approve Resolution #2013-1-15-1 Amending Real Property Exchange Agreement with the City of Newburgh  
Mr. Maldonado: Motion Seconded  
Discussion: None  
**VOTE: Unanimously approved by Roll Call.**

Mr. McIver noted that the DEC is extremely attentive to administrative details and timing necessary to present a complete application for February 7th. Mr. McDougal explained "End Zone", which is another 8% tax break to explore through the EDC. It's governed by thresholds of poverty and unemployment which are met in Census tracks 4 and 5. Since there are more development opportunities in Census Track 2 (Pierce's road), Ms. Waivada and Mr. MacDougall will meet with EDC on Feb 7<sup>th</sup> to request an extension of the End Zones to Census Track 2.

Mr. Whyatt proposed a Special Meeting for Tuesday, January 29<sup>th</sup> for the purpose of authorizing submission of the BCP Application and authorizing the Executive Director to sign the application, and approving the agreement between the IDA and Hudson Valley Lighting LLC. The Chair set the date as January 29<sup>th</sup> at 7:15pm.

**10. New Business:**

- **West Street Med Tech Center:** Mr. MacDougall, City Manager Herbek and Courtney Kain met to discuss West Med Tech. A Call Center is moving into the building, but the staff can't confirm if a lease has been signed. They also met with Walter Lambert, CEO of Northeast Development. An application is going before the Planning Board to extend the parking lot.

The IDA holds title to Lot 1. Northeast Development says that title is to transfer to them once build out is completed. Mr. Whyatt asked for recorded documentation to that effect. There was a discussion of ownership of the road, and who is responsible for final blacktop. Property cannot be deeded over until it meets all standards. Mr. MacDougall noted that approximately \$60,000 in taxes is currently due for Northeast Development's lots.

- **Residential Properties:** Mr. Waivada will discuss with the state OSC whether it is proper for IDA's to own residential properties. What the IDA owns is basically single-family properties and vacant lots, such as 3 on O'Keefe. She will discuss Landbank interest for the Ann Street property. IDA's cannot benefit coops or condos which, in effect, benefit individuals. An IDA is not allowed to loan funds and then forgive loans, as it formerly did with Northeast Development. We're also paying insurance on these as well.

Mr. Curry: the Board needs to develop a strategy to divest the IDA from properties that have zero business potential. Mr. Penney asked if the IDA can turn over the residential properties to Habitat for Humanity. Mr. Maldonado suggested the Land Bank. There was discussion of interim strategies such as the Ann Street lot.

- Mr. Smith asked how the Board can hold policy discussions other than in an executive session? Is such a format as a 'business session' or a Board Retreat legitimate? Mr. Whyatt suggested executive session format, although there might be exceptions for smaller groups if no actions are being taken. Mr. Whyatt will provide more advice at the next meeting. Ms. Waivada will send around the Mission Statement for everyone to review before the February meeting.

The next regular meeting of the board will be held on Tuesday, February 19th, 2013.

Mr. Penney: Motion to adjourn

Mr. Curry: Motion seconded:

**VOTE: By Unanimous Approval the meeting adjourned at 8:30pm**

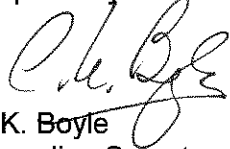
Mr. Penney: Motion to enter into executive session to discuss the Foundry Litigation

Mr. Curry: Motion Seconded

**VOTE: Unanimously approved.**

The Board reconvened at close of the Executive Session.

Respectfully submitted,



C. K. Boyle  
Recording Secretary

January 15, 2013

**CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY**

**RESOLUTION NO. 2013-1-15-1**

**AMENDING REAL PROPERTY EXCHANGE  
AGREEMENT WITH THE CITY OF NEWBURGH**

**WHEREAS:**

By Resolution 2012-12-17-1, adopted December 17, 2012, the City of Newburgh Industrial Development Agency (“IDA”) authorized the Chairman to execute a Land Disposition and Access Agreement (“Agreement”) with the City of Newburgh as an initial step in a cooperative effort among the IDA, the City of Newburgh and Hudson Valley Lighting, Inc. (“HVL”) to secure the remediation and improvement of land on Pierces Road for the purposes of industrial development and creation of jobs in the City of Newburgh;

After meeting subsequently with representatives of the New York State Department of Environmental Conservation regarding this effort, the parties wish to amend the Agreement in the form attached herewith as the “Amended Agreement,” so as to enable HVL to acquire, principally for storm water management purposes, and thereby to enhance HVL’s capacity to expend its activities on the property in the future, a portion of property that the IDA had previously intended to transfer to the City of Newburgh;

In amending the Agreement, the parties also wish to secure for the City of Newburgh an easement of drainage onto the portion of property that the IDA had previously intended to transfer to the City of Newburgh;

After full review, the IDA is prepared to make certain environmental determinations and findings in compliance with the New York State Environmental Quality Review Act and implementing regulations regarding the Amended Agreement in the form attached herewith.

**NOW THEREFORE BE IT RESOLVED:**

1. The actions contemplated by the Agreement include (a) access by IDA and its agents and assignees to a portion of the City’s Pierces Road parcel for the purposes of an environmental investigation in connection with an application to participate in the NYS Department of Environmental Conservation’s Brownfields Clean-up Program (BCP); (b) an exchange between the City and the IDA so as to reconfigure and increase the size of the IDA parcel for eventual conveyance to HVL or other party for Industrial Development Purposes, and to secure for the City of Newburgh certain storm water drainage rights into the IDA parcel.

2. The environmental investigation contemplated is a Type II action under SEQRA and requires no further action under SEQRA.

3. The transfer of real property, which entails less than 100 acres of property, is an Unlisted Action under SEQRA and is thus subject to Uncoordinated Review, pursuant to which the IDA may proceed as the only Involved Agency and need not declare itself Lead Agency for purposes of environmental review.


4. As the only Involved Agency, the IDA has taken a hard look at the proposed action, reviewed the attached Short Form EAF and other information as required, determined that the proposed action will have no significant impact and that therefore no Environmental Impact Statement regarding the action is required to be prepared; the IDA hereby approves the attached Notice of Determination of Non-Significance.

5. The Chairman is hereby authorized to execute the Amended Land Disposition and Access Agreement with the City of Newburgh in substantially the form attached, upon the request of the Executive Director and subject to minor modifications as may be required by Counsel or the Executive Director.

The foregoing resolution Number 2013-1-15-1 was duly put to vote, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
<b>Joshua Smith</b>	X			
<b>Nancy Thomas</b>	X			
<b>Richard Bedrosian</b>			X	
<b>Michael Curry</b>	X			
<b>Jerry Maldonado</b>	X			
<b>Sean O'Shea</b>	X			
<b>John Penney</b>	X			

This resolution was thereupon duly adopted of January 15, 2013.

  
Secretary

January 15, 2013

**LAND DISPOSITION AND ACCESS AGREEMENT**

**BETWEEN**

**CITY OF NEWBURGH,**

**AND**

**CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY**

This Land Disposition and Access Agreement (“Agreement”), effective as of [\_\_\_\_\_, 2013] (the “Effective Date”), is hereby made by and among:

A. The City of Newburgh, Orange County, New York, its agencies, departments, officers, employees, agents, representatives, successors and assigns, collectively referred to in this Agreement as the “City”; and

B. The City of Newburgh Industrial Development Agency, Orange County, New York, its agencies, departments, officers, employees, agents, representatives, successors and assigns, collectively referred to in this Agreement as the “IDA”.

The City and the IDA are collectively referred to herein as “the Parties” and individually referred to as a “Party”.

WHEREAS, Hudson Valley Lighting Inc. is a business operating within the City of Newburgh and has outgrown its current location; and

WHEREAS, the IDA is the sole owner of a parcel of land known as 5 Scobie Drive and more accurately described as Section 1, Block 1, Lot 6 as shown on the tax map of the City of Newburgh (the “IDA Property”); and

WHEREAS, the City is the sole owner of a parcel of land known as 70 Pierces Road more accurately described as Section 5, Block 1, Lot 16 as shown on the tax map of the City of Newburgh (the “City Property”); and

WHEREAS, Hudson Valley Lighting Inc. desires to remain in operation within the City has expressed an interest in relocating its business to the IDA Property; and

WHEREAS, to facilitate the relocation of Hudson Valley Lighting to the IDA Property, certain pre-development activities are required, including but not limited to access to City property and the transfer of a portion of the City Property to the IDA;

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

1. **Definitions:** The following terms used in this Agreement have the following meanings:
  - (a) "Agreement Areas" means the City Property to which the IDA is being granted access hereunder, as described in and shown on Exhibit A, in order to perform the pre-development activities as the term "Pre-development Activities" is defined herein.
  - (b) "Permittees" (individually a "Permittee") means the IDA and each of its employees, agents, representatives, successors, assigns, consultants, contractors, and subcontractors which are involved in the performance of the IDA's Obligations.
  - (c) "Assignee" means Hudson Valley Lighting, Inc. or an entity wholly-owned by Hudson Valley Lighting, Inc. as the assignee of the IDA's rights and obligations under this Agreement through a separate agreement between the IDA and Hudson Valley Lighting, Inc.
  - (c) "DEC" means the New York State Department of Environmental Conservation and its divisions and employees.
  - (d) "Pre-development Activities" means tasks associated with the transfer of property from the City to the IDA and such other activities as may be necessary or as required by the New York State Department of Environmental Conservation for the application of Hudson Valley Lighting Inc for the entry of the IDA Property including the portion of the City Property being transferred to the IDA into the Brownfield Cleanup Program (the Pre-development Activities and the conduct of such other activities as may be necessary or as required by the DEC, collectively referred to as "IDA Obligations").
2. **Agreement Is a Contract:** The Parties to this Agreement intend this Agreement to be a contract and to be enforceable as such. The contract shall be governed and interpreted according to the laws of the State of New York.
3. **Claims Against Non-Parties:** Nothing herein shall affect the right of any Party to pursue its rights, including, but not limited to, rights of contribution and indemnification, against entities not a Party to this Agreement relating in any way to the Environmental Conditions existing on the City Property and the IDA Property.



4. **Good-Faith Cooperation:** The Parties shall coordinate and cooperate in good faith with each other to achieve the objectives of this Agreement. Included within the duty of good faith is the duty of the IDA to periodically and timely inform the City of the activities they are undertaking to implement its responsibilities hereunder and of the City to periodically inform the IDA of the activities it is undertaking to implement its responsibilities hereunder.
5. **Dispute Resolution:** The Parties shall make all reasonable efforts to resolve informally any questions or disputes that arise in the implementation or interpretation of this Agreement. The Parties agree that, except as otherwise provided herein, prior to seeking judicial enforcement of this Agreement, they will engage in a mutually acceptable form of alternative dispute resolution (“ADR”), to be conducted in New York, for a period of not less than one month and not to exceed three months. Notwithstanding the foregoing, however, if (a) the Parties are unable to agree upon a mutually acceptable form of ADR within a period of one month from the date that the Party seeking enforcement of this Agreement so notifies the other Parties, (b) the ADR process fails to achieve a mutually acceptable resolution within the time period set forth in the foregoing sentence, or (c) the Party seeking enforcement of this Agreement deems the circumstance to be an emergency such that it believes it necessary to seek immediate injunctive or other equitable relief, then, in any such event, the Parties retain their rights to seek judicial enforcement of this Agreement.
6. **No Admissions:** The entry into this Agreement shall not be deemed or construed as an admission by any Party of liability, fault or wrongdoing under CERCLA or any other statute, contract or common law. In the implementation of this Agreement, the Parties shall not be required to make any admission of liability to federal or state governmental entities for any purpose whatsoever.

7. **Responsibilities of the City:** In exchange for the promises and covenants contained herein, the City shall:

(a) Provide timely access to the City Property to any Permittee and Hudson Valley Lighting Inc., as the Assignee, for the performance of the IDA's Obligations in accordance with this Agreement. Notwithstanding anything to the contrary and without in any way limiting the foregoing, the provision of access shall include, but not be limited to: a license or privilege of entering upon the City property and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary for the purposes of engaging in predevelopment activities which activities may include, but are not limited to, conducting surveys, physical inspections, tests, engineering and construction evaluation and reports, architectural study and planning, and environmental study, testing, and such other tests and site evaluations as are reasonably required for an evaluation and remediation of the property and the prosecution of any applications for governmental approvals.

(b) As the Assignee, provide to Hudson Valley Lighting, Inc., or an entity wholly-owned by Hudson Valley Lighting, Inc. formed for the purpose of submitting an application to the DEC to enter the Brownfield Cleanup Program for the remediation and re-development of the IDA Property including the portion of the City Property being transferred to the IDA pursuant to the terms of this Agreement, access to the City Property and all rights and permissions to the full extent as required by the Brownfield Cleanup Program. In addition, the City shall provide to Hudson Valley Lighting, Inc., as the Assignee, access to all technical, environmental and other records relating to the City Property.

- (c) The license or privilege hereby given shall commence upon the execution of this Agreement between the Parties. It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.
- (d) Cooperate with the IDA in the performance of its responsibilities pursuant to Paragraph 8 below.
- (e) Provide assistance for the re-development of the IDA Property, including the land transfer , site investigation and remediation and other pre-development activities with New York State DEC and local governmental agencies and other similar applicable parties. The City shall provide assistance reasonably requested by the IDA and Hudson Valley Lighting in obtaining licenses, approvals, permits and other cooperation from local, state, and Federal agencies and local governmental bodies; provided, however, that except as otherwise specifically described herein, the IDA and Hudson Valley Lighting shall have the primary responsibility for obtaining such approvals and cooperation.
- (f) Cooperate with the IDA and Hudson Valley Lighting, as the Assignee, in securing additional funding needed to complete the re-development of the IDA Property, including the portion of the City Property being transferred to the IDA pursuant to this Agreement. The City shall provide support applications for funding from other sources in the form of letters and resolutions of support.
- (g) The City hereby agrees to sell and convey the portion of the City Property identified as Zone 2 in Exhibit "A" to the IDA in accordance with the terms and provisions of this

Agreement and subject to compliance with applicable law. Insurable title to the City Property shall be conveyed by the City to the IDA at or prior to closing subject only to such exceptions to title as the IDA may approve, which approval will not be unreasonably withheld.

- (h) The purchase price for the portion of the City Property shall be the granting of a drainage easement by the IDA to the City over the portion of the IDA property identified as Zone 1 in Exhibit "A" in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law.
- (i) The City will not accept additional hazardous wastes on the City Property from neighboring properties, and further represents that the City will take all reasonable and necessary action to prevent the City Property from accepting any and all hazardous waste found on parcels adjacent to the City Property, known as the Dupont-Stauffer Superfund site and further represents that it will not request to re-open any records of decision in connection with the United States Environmental Protection Agency Administrative Settlement Agreement and Order on Consent for a Removal Action among E.I. DuPont de Nemours & Company, Bayer CropScience, Inc. (Successor-in-Interest to Stauffer Chemical Company) and EPA, Index Number CERCLA-02-2010-200X, effective October 4, 2010.
- (j) The City shall not be responsible for the costs of the Pre-development Activities authorized under this Agreement.

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

(a) Except as otherwise provided in this Agreement, implement all requirements of the Pre-development Activities, including, but not limited to, the survey of the City Property and IDA property.

(b) The IDA shall be responsible for the costs of the City's obligations as set forth in Paragraph 7.

(c) The IDA shall require that any of its contractors or subcontractors who (i) perform any portion of the Pre-development Activities at the City Property or (ii) enter onto the City Property shall provide the insurance coverages herein on the terms set forth, at their expense, Worker's Compensation insurance, public liability insurance covering personal injury and property damage, and other insurance with minimum coverages as listed below. Such policies shall be written by insurers of recognized financial standing who have been fully informed as to the nature of the Work to be performed. The Commercial General Liability Insurance shall be written on an ISO Occurrence Form (or equivalent). Except for Worker's Compensation insurance, the City shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligations of such contractors and subcontractors and not those of the City. Each policy naming the City as an additional insured shall not contain an "owned property exclusion" nor a "severability of interest exclusion."

Type of Coverage

Limits of Coverage

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

Prior to the commencement of the Pre-development Activities, the IDA shall require the contractors and subcontractors retained by the IDA or its assigns to submit to the City upon the City's request certificates of insurance evidencing compliance by such contractors and subcontractors with these requirements.

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

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

- (1) Policy retroactive dates coincide with or precede the contractors' start of the performance of the Pre-development Activities (including subsequent policies purchased as renewals or replacements); and

- (2) Prompt notice shall be given to the City of circumstances or incidents that might give rise to future claims with respect to the Pre-development Activities.

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

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

The IDA hereby agrees to defend, indemnify and hold City harmless against any claims, actions and proceedings brought against City arising out of, in connection with and/or relating to Pre-development Activities on the City Property.

- (d) Pursue the re-development of the IDA Property, including but not limited to the land transfer by the City, site investigation, remediation and other pre-development activities with New York State DEC and local governmental agencies and other similar applicable parties. The IDA shall provide assistance reasonably requested by Hudson Valley Lighting in obtaining licenses, approvals, permits and other cooperation from local, state, and Federal agencies and local governmental bodies; provided, however, that except as otherwise specifically described herein, the IDA and Hudson Valley Lighting shall have the primary responsibility for obtaining such approvals and cooperation.
- (e) Cooperate with the City and Hudson Valley Lighting in securing additional funding needed to complete the re-development of the IDA Property including the portion of the

City Property being transferred to the IDA pursuant to the terms of this Agreement. The IDA shall provide support applications for funding from other sources in the form of letters and resolutions of support.

- (f) The IDA hereby agrees to convey to the City an easement for drainage over the portion of the IDA Property identified as Zone 1 in Exhibit "A" in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law.
- (g) The purchase price for the easement shall be the sale and conveyance of the portion of the City Property identified as Zone 2 in Exhibit "A" in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law.
- (h) Provide the City with copies of all draft plans, providing the City with a reasonable opportunity to comment on such plans, and final plans and reports submitted to and approved by DEC and or any other regulatory agencies of the United States or the State of New York pursuant to the Brownfield Cleanup Program relating to the Agreement Areas and to the IDA and/or Hudson Valley Lighting's obligations.
- (i) Cooperate with the City in the performance of its obligations pursuant to Paragraph 7.
- (j) In the event that, following a period of thirty (30) days after the receipt by the IDA of written notice from the City that the IDA or any Permittee has breached this Agreement in some respect, within which period of time the IDA or any Permittee has the opportunity to cure such breach, the IDA or any Permittee has failed to fulfill any obligation of this Agreement, the IDA or any Permittee shall not oppose, and shall comply with, an applicable order by a court of competent jurisdiction, and shall indemnify, defend and hold the City harmless from any and all Claims that are based



exclusively upon, and are derived exclusively from, any such breach of this Agreement and non-compliance with any such court order.

9. **Closing:** The closing of the transfer of title for the City owned parcel shall occur at or prior to the closing between the IDA and Hudson Valley Lighting. Any and all closings shall be held at a location agreeable to all Parties. At the closing the City shall execute and deliver to the IDA a bargain and sale deed in recordable form with covenants against grantor's acts and the IDA shall execute and deliver to the City an easement in recordable form. Each Party shall be responsible for all taxes, assessments and water and sewer rents accrued against its parcels as of the date preceding the closing date for the conveyance. Each Party shall be responsible for all taxes, assessment and water and sewer rents accruing against the conveyed parcels on and after the closing date for such parcels. Each Party shall pay and be responsible for any and all real property transfer and similar taxes.

10. **Authority, Access and Term of Agreement:** The City represents that it is the sole owner of the City Property, and has the authority to grant the access rights and other rights as set forth in this Agreement, and further represents that, to the best of its knowledge and information, there are no unrecorded liens, encumbrances or rights of others that could affect any Permittee's access to, or right to use, the City Property as provided for herein. This Agreement shall terminate at the later of the closing set forth in paragraph 9 herein or the successful completion of the remediation of the IDA Property through the DEC Brownfield Cleanup program.

10. **Reservation of Claims:** Notwithstanding anything to the contrary contained in this Agreement or otherwise:



83 Broadway  
Newburgh, NY 12550  
Attn: Teri Waivada

With copies to: Oxman, Tulis, Kirkpatrick, Whyatt & Geiger, LLP  
Suite 100  
1210 Bloomingdale Road  
White Plains, NY 10605  
Attn: Thomas Whyatt, Esq.

If to Hudson Valley Lighting:

With copies to: Jacobowitz & Gubitz, LLP  
P.O. Box 367  
158 Orange Avenue  
Walden, NY 12586  
Attn: John C. Cappello, Esq.

12. **Enforceability:** Should any provision of this Agreement be deemed unenforceable for any reason, the remainder of this Agreement shall continue in effect so long as the purpose of this Agreement is not nullified by the absence of such provision.
13. **Entire Agreement:** This Agreement reflects the entire agreement among the Parties as to the same subject matter, and, except as otherwise provided in this Agreement, all prior agreements, understandings and commitments are merged with and into and superseded by this Agreement. This Agreement can be amended, including, but not limited to, an expansion of the Agreement Areas for the performance of the Parties' Obligations, restated or supplemented only by a written agreement signed by all Parties. This Agreement may be executed in counterparts, all of which together shall be the original Agreement.

14. **Non-Assignment:** The rights, liabilities and obligations under this Agreement shall not be transferred or assigned by any Party unless each Party shall give prior written consent for such transfer or assignment, except that the IDA may assign some of its rights, liabilities and obligations under this Agreement to Hudson Valley Lighting Inc. or an entity formed by and wholly owned by Hudson Valley Lighting Inc. for the purpose of entry of the IDA Property into the DEC Brownfield Cleanup Program. The City agrees that such assignment shall be without recourse to the IDA for those obligations so assigned; the Assignee shall be responsible for all such assigned obligations of the IDA and the City will release the IDA from such obligations. Consent shall not be unreasonably delayed or withheld.
15. **Headings:** The headings are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

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

Dated: \_\_\_\_\_

**THE CITY OF NEWBURGH, NEW YORK**

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



**Appendix C**  
**State Environmental Quality Review**  
**SHORT ENVIRONMENTAL ASSESSMENT FORM**  
**For UNLISTED ACTIONS Only**

**PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)**

1. APPLICANT/SPONSOR City of Newburgh Industrial Development Agency	2. PROJECT NAME Land Disposition and Access
3. PROJECT LOCATION: Municipality <u>City of Newburgh</u> County <u>Orange</u>	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) <u>70 Pierces Road (p/o) and 5 Scobie Drive (p/o), shown as Zone 1 and Zone 2 on Exhibit A attached.</u>	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Access by the IDA to City parcel (Zone 2 on Exhibit) for environmental investigation purposes, and transfer of City Parcel (Zone 2) to the IDA in exchange for IDA's granting to the City of a storm water drainage easement onto the IDA parcel (Zone 1).	
7. AMOUNT OF LAND AFFECTED: Initially <u>5</u> acres    Ultimately <u>5</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals:  Planning Board subdivision approval is required for the boundary line exchange.	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    If Yes, list agency(s) name and permit/approvals:	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>City of Newburgh Industrial Development Agency</u> Date: <u>01/15/2013</u> Signature: _____	

**If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment**

**PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)**

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.  
 Yes  No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.  
 Yes  No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:  
No.

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:  
No.

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:  
No.

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:  
No.

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:  
No.

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:  
No.

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:  
No.

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?  
 Yes  No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?  
 Yes  No If Yes, explain briefly:

**PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)**

**INSTRUCTIONS:** For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.

City of Newburgh IDA  
\_\_\_\_\_  
Name of Lead Agency

Theresa G. Waivada  
\_\_\_\_\_  
Print or Type Name of Responsible Officer in Lead Agency

Signature of Responsible Officer in Lead Agency

01/15/2013  
\_\_\_\_\_  
Date

Executive Director  
\_\_\_\_\_  
Title of Responsible Officer

\_\_\_\_\_  
Signature of Preparer (If different from responsible officer)

Reset

# Exhibit A



Prepared by City of Newburgh  
Planning Department 11/28/12

Scale = 1:3000



LFF



State Environmental Quality Review  
**NEGATIVE DECLARATION**  
Notice of Determination of Non-Significance

Project Number

Date: January 15, 2015

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The City of Newburgh IDA (NIDA), as lead agency, has determined that the proposed action described below will not have a significant adverse environmental impact and a Draft Impact Statement will not be prepared.

**Name of Action:**

Grant of City of Newburgh land to the IDA in exchange for a grant of stormwater drainage easement on IDA land to the City.

**SEQR Status:** Type 1   
Unlisted

**Conditioned Negative Declaration:**  Yes  
 No

**Description of Action:**

The City of Newburgh and the NIDA propose to exchange a small parcel of City land, to be transferred to the IDA (Zone 2 on map attached), in exchange for an easement to be granted permit the City to drain storm water onto a portion of IDA land (Zone 1 on map attached). The NIDA will cause to be carried out pre-development studies related to possible Brownfield Clean-up of NIDA property including the parcel received from the City of Newburgh.

**Location:** (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.)

70 Pierces Road (p/o) and 5 Scobie Drive (p/o), City of Newburgh, New York; map attached.

**Reasons Supporting This Determination:**

(See 617.7(a)-(c) for requirements of this determination ; see 617.7(d) for Conditioned Negative Declaration)

(a) Transfer of a 2.7-acre parcel of land owned by the City of Newburgh to the NIDA in exchange for conveyance to the City of Newburgh of a storm water drainage easement onto a 2.2 acre parcel of land owned by the NIDA. This constitutes merely a boundary line adjustment in exchange for a drainage easement and results in no significant environmental impacts. City of Newburgh Planning Board approval is required to implement the lot line adjustment. The increased size of the NIDA parcel is expected to improve its suitability for industrial development. The proposed exchange is an essential part of a plan to redevelop the NIDA lot for industrial purposes, but does not commit the NIDA to such redevelopment. The exchange and subdivision are both unlisted actions.

(b) Conduct of pre-development studies. These studies, including surveying, sampling and some limited excavation, are intended to determine the eligibility of NIDA property, including the parcel received from the City of Newburgh, for inclusion in a Brownfields Clean-up Program. Such studies are SEQRA Type II actions and are not subject to SEQRA.

**If Conditioned Negative Declaration**, provide on attachment the specific mitigation measures imposed, and identify comment period (not less than 30 days from date of publication in the ENB)

**For Further Information:**

Contact Person: Theresa G. Waivada, Executive Director, NIDA

Address: 83 Broadway, Newburgh, NY 12550

Telephone Number: (845) 569-7369

**For Type 1 Actions and Conditioned Negative Declarations, a Copy of this Notice is sent to:**

Chief Executive Officer , Town / City / Village of

Other involved agencies (if any)

Applicant (if any)

Environmental Notice Bulletin, 625 Broadway, Albany NY, 12233-1750 (Type One Actions only)

# Exhibit A



Prepared by City of Newburgh  
Planning Department 11/28/12

Scale = 1:3000



LFF

City of Newburgh Industrial Development Agency  
Resolution No. 2013-1-15-2

Resolution to support the Clearwater and the Quassaick Creek Watershed Alliance in their application to apply for a 2013 New York State Department of Environmental Conservation Justice Grant to undertake several projects along the Quassaick Creek Corridor.

WHEREAS, the City of Newburgh Industrial Development Agency is dedicated to the economic stability of the City and the advancement of City's quality of life and protection of its natural resources,

WHEREAS, the proposal, if approved, will stabilize the stream with tree plantings at Muchattoes Lake and the Quassaick Creek Corridor, which is adjacent to an affordable housing complex, Belvedere at Lake Street, for which the Agency issued tax exempt bond financing and further, upon completion, will enhance the quality of life for the residents of the City and Belvedere,

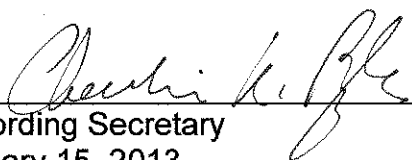
NOW, therefore, the City of Newburgh industrial Development Agency supports the efforts of Clearwater and the Quassaick Creek Watershed Alliance in their application to apply for a 2013 New York State Department of Environmental Conservation Justice Grant to undertake several projects along the Quassaick Creek Corridor and

The Agency supports the potential for a fitness trails and linkages around the lake.

The foregoing Resolution Number 2013-01-15-2 was duly put to vote, which resulted as follows:

	Yea	Nay	Absent	Abstain
Joshua Smith	X			
Nancy Billman	X			
Richard Bedrosian			X	
Michael Curry	X			
Jerry Maldonado	X			
Sean O'Shea	X			
John Penney	X			

The resolution was thereupon duly adopted.

  
\_\_\_\_\_  
Recording Secretary  
January 15, 2013