

COMMON COUNCIL AGENDA

May 21, 2013

7:00 p.m. Call Meeting to Order
Salute to the Flag of the United States
Public Comments
Minutes of May 7, 2013
PINK SHEET sign off

1. Consideration of a Resolution to approve a Community Development Loan Request in the amount of \$21,000. (Thoma Development).
2. Consideration of a Resolution to approve Dennis Gallagher's request to participate in the Sidewalk Program. (Ann Hotchkin)
3. Consideration of a Resolution to approve a Sound Device Permit for the Walk For Christ 2013 (Breck Aspinwall)
4. Consideration of a Resolution to approve the "2013 Downtown Parking Improvement Proposal" tendered by the Cortland Downtown Partnership. (Adam McGivern)
5. Consideration of a Resolution to adopt a Local Law to establish a Real Property Tax Exemption for new construction and major rehabilitation of mixed use Property in the Central Business District. (Alderperson Silliman)
6. Consideration of a Resolution determining the environmental non-significance of the proposed "Cortland Wastewater Treatment Plant upgrade project"

WHEREAS, the Common Council of the City of Cortland (hereinafter "Council"), has received an application for an upgrade project at the City's Waste Water Treatment Plant; and

WHEREAS, the proposed action constitutes an Unlisted Action pursuant to the regulations of the State Environmental Quality Review Act (SEQRA) (6 NYCRR Part 617); and

WHEREAS, Cedarwood Engineering Services PLLC, the City's consulting engineers have prepared an Environmental Assessment Form, Part I, in connection with the proposed action; and

WHEREAS, the Council is the only permitting agency for this Permit; and

WHEREAS, on February 19, 2013 the Council by resolution declared itself Lead Agency; and

WHEREAS, as lead agency, the Council notified all interested parties of the application and received no comments other than statements of no opposition to the project within the comment period; and

WHEREAS, the Council has found that the Project will be accomplished totally within the current site of the City Waste Water Treatment Plant, and that there will be no disturbance of new land or any other significant environmental impact from either the construction or operation of the upgrade; and

WHEREAS, the Council has further determined that this upgrade will significantly improve the operation of the existing aging systems at the current Waste Water Treatment Plant, and enable the plant to comply with new regulatory requirements and to maximize energy efficiency, including the production of energy from waste which will be used to both heat and operate the facility, thus positively impacting the environment and decreasing the cost of operating the plant; and

WHEREAS, as lead agency, the Council conducted an environmental review in accordance with the requirements of SEQRA and has considered the proposed action, reviewed the Full Environmental Assessment Form Parts 1 and 2 filed with them in connection with the proposed action, reviewed the criteria set forth in the SEQRA Regulations at 6 NYCRR Part 617.7(c), thoroughly analyzed the relevant areas of environmental concern, reviewed supplemental information provided by the applicant, and by these actions taken a “hard look” at the potential adverse environmental impacts of the proposed action on those relevant areas of environmental concern, both on its own and with the aid of its retained engineering firm and legal counsel; and

WHEREAS, based on this review, pursuant to the provisions of 6 NYCRR Part 617.7(c), the Lead Agency has determined that it is unnecessary to prepare or submit any further assessment or comment under Part 3 of the Environmental Assessment Form submitted in this action;

**NOW THEREFORE BE IT RESOLVED BY THE CITY OF CORTLAND
COMMON COUNCIL AS FOLLOWS:**

SECTION 1. Based upon the foregoing, the City of Cortland Common Council hereby declares that the proposed Cortland Waste Water Treatment Plant Upgrade Project will not have any significant adverse environmental impacts; and

SECTION 2. The Council adopts a Negative Declaration as its determination of significance pursuant to SEQRA in connection with the environmental review of the proposed project and adopts the findings, conclusion and reasoning all as set forth herein and in the record of this proceeding including the comments and discussions had at the meeting of the Council held in conjunction with the review of the Environmental Assessment Form submitted for the Project: and

SECTION 3. The Council authorizes the Mayor to sign the Full Environmental Assessment Form in conformance with this determination and that a Negative Declaration be prepared and signed in conformance herewith; and

SECTION 4. The Council authorizes and directs the forwarding of a copy of the Negative Declaration, in appropriate form, to the New York State Department of Environmental Conservation for the purposes of publication of the Negative Declaration in the Environmental Notice Bulletin in accordance with the requirements of Part 617.12 of the SEQRA Regulations; and

SECTION 5. The Council authorizes and directs the filing of a copy of the Negative Declaration in the office of the City Clerk of the City of Cortland, as well as any such other steps as may be necessary to effectuate this decision pursuant to SEQRA or to any other applicable law or regulation; and

SECTION 6. This resolution shall take effect immediately.

WHEREUPON, this Resolution was declared adopted by the Common Council of the City of Cortland:

The motion was moved by: _____.

The motion was seconded by: _____.

Motion approved: _____.

Date of Adoption: _____, 2013.

7. Consideration of a Bond Resolution of the City of Cortland, New York, authorizing the issuance of \$13,500,000 serial bonds to finance the cost of the reconstruction of the City's Waste Water Treatment Plant. (Mack Cook)
8. Consideration of a Resolution to authorize the publication of the Estoppel Notice in connection With the Bond Resolution for \$13,500,000 to finance the construction of the City's Waste Water Treatment Plant. (Mack Cook)
9. Consideration of a Resolution to approve donations and deposit funds into the Cortland Youth Bureau operating budget. Donated funds will be added to the Following budget lines: (John McNerney)

Donation	Amount	Budget Line	Reason
Cortland Rotary Club	\$1,440.00	7110.5206	Shelter Painting
Mike Dexter	250.00	7110.5206	Dexter Fence
Todd & Michelle Funk	500.00	7330.5400	Youth Center Kitchen Program

10. Consideration of a Resolution to appropriate \$14,150.00 from the proceeds from The sale of surplus equipment to account 8120-520600 Operating Equipment – Sanitary Sewers. (Nicholas Dovi)
11. Consideration of a Resolution to approve monies reimbursed from FEMA for For the Smoke Detector Program grant be appropriated to the fire department Budget lines as follows: (Chief Glover)
Account #A3410-415 (Contractual) in the amount of \$5,796.00
12. Consideration of a Resolution to accept and recognize the following donations From local business and individuals: (John McNerney)

Donation	Amount
Crown City Rollerz	\$ 447.00
Jon Finkelstein	25.00
Total	\$ 472.00

13. Consideration of a Resolution to appropriate an \$8,402.42 Insurance Recovery to A7110-5407 line. (John McNerney).
14. Consideration of a Resolution to add the position of Corporation Counsel to the standard workday hours list for this appointed position. (Mayor Tobin)
15. Consideration of a Resolution approving the Memorandum of Understanding Between the City of Cortland and Professional Wastewater Operators Association concerning the 2014-16 collective-bargaining agreement and to authorize the Mayor to sign said agreement. (Bruce Adams)
16. Consideration of a Resolution to appropriate \$27,500 from the General Fund’s Contingency account to the Law Department to retain legal counsel to represent the City’s interest in the following matters:
 - \$10,000 to defend the City from demands brought by the Civil Service Employees Association, Inc., City of Cortland Unit President Howard Thomas, for compensation for work performed by others in cleaning downtown sidewalks in preparation for the 2012 Jets Welcoming Ceremony.
 - \$10,000 to represent the City in demand by the Civil Service Employees Association, Inc., City of Cortland Unit President Howard Thomas, for Impact Bargaining pertaining to certain duties previously under the auspicious of the Public Safety Department being transferred to the Public Works Department.
 - \$7,500 to represent the City in a demand by the Cortland Professional Firefighters Association, President Derrick Reynolds, for extra compensation to be paid to non-firefighter member of the bargaining unit as “Kelly Time”. (Law Department)

17. Consideration of a Resolution to appropriate funds received from the New York Schools Insurance Reciprocal in the amount of \$8,402.42 to budget line 7110.5407 to repair the Fence at Dexter Park.

18. Consideration of a Resolution to acquire the following equipment:

- Two new Holland, Model Backhoes for the Water Department at NYS contract List price of \$177,800 less trade-in allowance for surplus equipment of \$63,552 For a net purchase price of \$114,248
- One Massey Ferguson Model 1660 4 X 4 loader with 72" rotary cutter for Youth Bureau/Parks at NYS contract list price of \$38,278 less trade-in allowance for Surplus equipment of \$8,900 for a net purchase price of \$29,378
- One new Holland Skid Steer Loader Model 230 and Bradco 24" 30 RPM Rock Saw for DPW at NYS contract list price of \$56,852 less trade-in allowance for surplus equipment of \$10,142 for a net purchase price of \$46,710
- One Ferris 5100ZC330 Zero Turn Mower with 61" rear deck for Youth Bureau/Parks at NYS contract list price of \$15,302 less trade-in allowance for surplus equipment of \$5,402 for a net purchase price of \$9,900

Summary

Combined Purchase Price	\$288,232
Less trade-in allowance	<u>87,996</u>
Net expenditure	\$200,236

(Chris Bistocchi)



M E M O

TO: Mayor Brian Tobin and City of Cortland Common Council

FROM: Ann Hotchkin, Program Manager 

DATE: May 13, 2013

SUBJECT: Dennis Gallagher's Participation in the Sidewalk Program

Dennis Gallagher has applied to the City's 2013 Sidewalk Program for sidewalk replacement at his home located at 25 Hyatt Street. HUD regulation 24 CFR 570.489(h) prohibits the participation of any employee, agent, officer, elected or appointed official or any person with whom they have business or family ties from participating in a community development program without a waiver of the Conflict of Interest requirements. Dennis is employed by the City of Cortland's Department of Public Works. In this role, he completes the sidewalk inspections.

Our office qualifies all the sidewalk program participants and then sends the applications to the DPW. Superintendent Chris Bistocchi signs off on all the inspections and, when asked, makes an assessment of the cost estimates to make sure they are fair. Chris, or a designated DPW employee, will review Dennis' cost estimate and inspect his sidewalk.

We will copy the City's Corporation Counsel to confirm that Dennis Gallagher's participation does not violate any State or local law. The City should openly discuss Dennis' intended participation at the May 21, 2013 Common Council meeting.

Anyone who has any questions is encouraged to contact me at 753-1433 or via email at ann@thomadevelopment.com.

cc: Richard Van Donsel, City Corporation Counsel
Dennis Gallagher
Chris Bistocchi



**CITY OF CORTLAND
OFFICE OF CITY CLERK**

25 COURT STREET • CORTLAND, NY 13045
PHONE (607) 756-6521 • FAX (607) 756-4644

JUDITH CHAMBERLIN
CITY CLERK

SOUND DEVICE PERMIT

DATE REQUESTED: July 14, 2013 ISSUANCE DATE: _____
NAME: WALK FOR CHRIST 2013 EXPIRATION DATE: _____
ADDRESS: Breck Aspinwall TELEPHONE: 607-591-2587
3689 PAGE GREEN RD.
CORTLAND, NY 13045

TYPE OF SOUND DEVICE: OUTSIDE SPEAKERS times: 3-4 pm
ON OUR TRUCK
NON-PROFIT:

(*Please check if you are a non-profit group therefore no licensing fee applies)

LICENSE FEE: Fixed ~~Location \$250~~ Mounting upon Motor Vehicle ~~\$500~~ *Fee waived*

Fixed Location: For the use or operation of any radio, phonograph, microphone or other device by which sounds are magnified and caused to be heard over any public street or public place from any one fixed location and not in, or mounted upon a motor vehicle, the sum of \$250 for any day or part of a day for which the applicant desires permission hereunder. (Code of Ordinances 193-5 Noise Article II Sound Devices [adopted 8-5-1969 as Ch. 12, Art. VI, of the 1969 Code of Ordinances])

Mounting upon motor vehicle: For the use or operation of any radio, phonograph, microphone or other device by which sounds are magnified and caused to be heard over any public street or public place to be used in, or mounted upon, a motor vehicle, the sum of \$500 for any day or part of a day for which the applicant desires permission hereunder. (Code of Ordinances 193-5 Noise Article II Sound Devices [adopted 8-5-1969 as Ch. 12, Art. VI, of the 1969 Code of Ordinances])

RESTRICTIONS, IF ANY:

NON-PROFIT:

Breck Aspinwall
Signature of Applicant

May 6, 2013
Date

APPLICATION MUST BE FILED AT LEAST TWO (2) WEEKS BEFORE FUNCTION TO ALLOW TIME FOR PROCESSING.

2013 Downtown Parking Permit Improvement Proposal

The Cortland Downtown Partnership (CDP) is very thankful for the City of Cortland's support and interest in collaborating on projects to enhance the cultural and commercial offerings of the Central Business District. Since the CDP's formation, in 2006, Cortland has seen a renewed interest in downtown that has led to significant improvements in two of the most important indicators of an urban core's economic health; first floor vacancy rates and residential and commercial upperfloor development. In order to maintain and increase this momentum we need to update our downtown's parking permit program to eliminate barriers to some of the more challenging properties downtown and encourage additional development.

Throughout the course of the Cortland Downtown Partnership's seven-year management of the City Parking Permit Program the CDP has implemented many internal improvements such as awareness campaigns, and improved hang tag design. Common Council approval of the following items for immediate implementation will further improve the parking permit policy to increase accessibility, decrease vacancy and encourage upper floor residential development.

- I. Allow an incremental expansion of **Downtown Resident spaces** closest to residential areas. For \$360 annually Downtown Resident permit holders will have access to reserved sections to park their vehicles 24 hrs/7 days a week, regardless of even/odd rules excluding designated snow removal months when they will revert to odd/even. Spaces will be denoted by signage and/or paint designation at the discretion of the DPW and Public Safety. Cost for sign creation and installation could be deducted from the City portion of permit parking revenue, or handled by the CDP if all of the program's proceeds are turned over to the organization.

Downtown Resident space breakdown: Designate 13 spaces along Groton Ave. in the lot as reserved, 6 spaces in the Williams St. lot, 16 spaces in the Marketplace Mall lot, 28 spaces on Haskell Place and 10 spaces along the CVS side of the Youth Bureau parking lot. The CDP will begin to take reservations for the spaces upon approval by Common Council and coordinate an incremental approach to adding reserved spaces and signage with the DPW. Space designation by signage and/or paint will be at the discretion of the DPW and Public Safety and should allow joint towing enforcement by permit holders and City parking enforcement staff. Permit holders will be designated by the addition of a sticker to the existing permit.

- II. **Convert all of** the 82 "NO OVERNIGHT PARKING" spaces in Groton/Hollywood lot, excluding handicap spaces, to odd and even – split evenly.

- III. Add a **Day Pass** to the permit program at \$5/day. CDP will utilize the current (one punch) monthly pass design with a stamped date on the front of the permit.

- IV. **Increase the rates** of permits from \$14/month to \$20/month to correspond with 2011 parking ticket price increases. (Parking ticket fees are now \$25 minimum per violation). The current discount of \$13/month if six months are purchased will be increased to \$15/month.

CITY OF CORTLAND LOCAL LAW NO .__ OF THE YEAR 2013,
A LOCAL LAW ENTITLED "EXEMPTION OF CERTAIN NEW OR
SUBSTANTIALLY REHABILITATED MULTIPLE DWELLINGS

Be it enacted by the City Council of the City of Cortland as follows:

Section 1.

1. Legislative Intent

The Common Council of the City of Cortland, New York has determined it necessary and desirable to authorize a partial exemption from real property taxation of the increase in assessed value attributable to the construction of or the substantial rehabilitation of multiple dwellings with an affordable housing component located within the City of Cortland Central Business District. Such tax exemption is deemed desirable in furtherance of the goals identified in the City of Cortland Comprehensive Plan: to promote diversity in the downtown housing market, further support the downtown economy, and encourage investment in existing downtown buildings.

Section 2.

1. Basis for Exemption

Pursuant to authority granted by the Real Property Tax Law Section 421-m, an eligible multiple dwelling constructed or substantially rehabilitated in the benefit area designated pursuant to this section shall be eligible for an exemption from taxation and local ad valorem levies for the tax years commencing during the construction or rehabilitation of such structure pursuant to the following schedule. Provided however, that the amount of taxes paid during such period shall be at least the amount of the taxes paid on such land and any improvements thereon immediately preceding the commencement of the exemption. In addition, any improvements to property receiving this exemption shall not be eligible to receive any other exemption under any other section of law.

CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIPLE DWELLINGS

During construction or substantial rehabilitation (maximum three years)	100%
Following completion of work year:	
1 through 12	100%
13-14	80%
15-16	60%

17-18	40%
19-20	20%

2. Definitions

When used in this local law, the following terms shall have the following meanings:

“Designated Benefit Area” shall mean the area of the City of Cortland identified as the Central Business District on the City of Cortland Zoning Map effective as of the date of adoption of this local law.

“Substantial Rehabilitation” shall mean all work necessary to bring a property into compliance with applicable laws and regulations and shall include but not be limited to the installation, replacement or repair of, heating, plumbing, electrical and related systems and the elimination of all hazardous and immediately hazardous violations in the structure in accordance with state and local law and regulation. Substantial rehabilitation shall also include reconstruction or work to improve the habitability or prolong the useful life of the property with the exclusion of ordinary maintenance or repair.

“Multiple dwelling” shall mean a dwelling, other than a hotel which is to be occupied or is occupied as the residence or home of three or more families living independently from one another including dwellings rented or owned as a cooperative or a condominium

3. Eligibility

In order to grant the real property tax exemption provided under Section two, the City shall determine that:

(a) Such construction or substantial rehabilitation of a multiple dwelling will occur on land which:

(i) is vacant, predominantly vacant, under-utilized, or

(ii) is improved with a non-conforming use, or

(iii) contains one or more substandard or structurally unsound buildings or a building that has been certified as unsanitary by the local health agency.

(b) At least 20% of the units shall be affordable to individuals or families of low or moderate income whose incomes at the time of initial occupancy do not exceed 90% of the area median income adjusted for family size and the individual or family shall pay in rent or carrying charges no more than 30% of their adjusted gross income as reported in their federal income tax return or would be reported if such return were required, less personal exemptions and deductions and

medical expenses as are actually taken by the taxpayer, as verified according to procedures established by the state division of housing and community renewal. The City shall consult annually with the division to determine that the property is in compliance with the affordability requirements of this local law. If such requirements are not met, the multiple dwelling shall not qualify for the exemption in that year.

(c). Such construction or substantial rehabilitation is carried out with the assistance of grants, loans or subsidies for the construction or rehabilitation of affordable housing from any state, local, or federal agency.

(d). Such construction or substantial rehabilitation shall commence after the effective date of this section, but no later than July 15, 2015.

(e) If such property is to be used partially as a multiple dwelling and partially for commercial or other purposes, that:

(i) the square footage of the portion of the property used as a multiple dwelling represents at least 50% of the square footage of the entire property and;

(ii) at least 20 % of the units are affordable to individuals or families of low and moderate income and;

(iii) the requirements of this section relative to a multiple dwelling are otherwise satisfied.

(f) Any property owner seeking an exemption within the designated benefit area shall file form RP-421-m with the City Assessors' office for review, prior to the applicable taxable status date of the initial year for which the exemption is sought.

Section 3.

1. Severability

If any part of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect the validity of the remainder of this local law or the application thereof to other persons or circumstances, and the City Council of the City of Cortland hereby declares it would have passed this local law or the remainder thereof had such invalid application or invalid provision have been apparent.

Section 4.

1. Repealer

All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

Section 5.

1. Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

CORTLAND FIRE DEPARTMENT

BUDGET MEMORANDUM

DATE: 5/8/13

The Cortland Fire Department is in receipt of a deposit from FEMA in the amount of \$5,796.00 for reimbursement for costs associated with the Smoke Detector Program grant. I am requesting the monies be appropriated as follows:

TRANSFERRED TO

ACCOUNT #: A3410-415 (Contractual)

AMOUNT: \$5,796

This is from an amendment to the CPR grant, approved by FEMA, to expend the remaining funds on smoke detectors in order to cover as many residences in the City as possible.

APPROVED BY:



Charles S. Glover, Fire Chief



RECEIVED
3/21/13
JMS

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
REGION 3
333 EAST WASHINGTON STREET
SYRACUSE, NY 13202
www.nysdot.gov

CARL F. FORD, P.E.
REGIONAL DIRECTOR

JOAN MCDONALD
COMMISSIONER

March 19, 2013

Mr. Bruce Adams
Chief Operator
City of Cortland Wastewater Facility
251 Port Watson Street
Cortland, New York 13045

Dear Mr. Adams:

RE: SEQR – LEAD AGENCY REQUEST
PROPOSED WASTEWATER TREATMENT PLANT UPGRADES
CITY OF CORTLAND, CORTLAND COUNTY

We have received the material regarding the above-referenced proposal. The Region has no objections to the Common Council of the City of Cortland assuming lead agency status for SEQR purposes.

Since the project is not anticipated to have any significant impacts to the transportation system, the Region will be an Interested Agency for SEQR purposes.

If you have any questions, please contact Mark Grainer, of my staff, at (315) 428-4612.

Very truly yours,

JOSEPH A. FLINT, P.E.
Acting Director, Planning & Program Management Group



Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

New York State Office of Parks, Recreation and Historic Preservation

Division for Historic Preservation
P.O. Box 189, Waterford, New York 12188-0189
518-237-8643

March 05, 2013

Bruce Adams
City of Cortland Wastewater Plant
251 Port Watson Street
Cortland, New York 13045

Re: SEQRA
Cortland WWTP Upgrade
215 Port Watson Street
CORTLAND, Cortland County
13PR00918

Dear Mr. Adams:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the project in accordance with the New York State Historic Preservation Act of 1980 (Section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8) and its implementing regulations (6 NYCRR Part 617).

Based upon this review, it is the OPRHP's opinion that your project will have No Impact upon cultural resources in or eligible for inclusion in the State and National Register of Historic Places.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont
Deputy Commissioner for Historic Preservation



CITY OF CORTLAND WASTEWATER TREATMENT FACILITY



Bruce Adams, Chief Operator
Industrial Pretreatment Coordinator

February 20, 2013

Re: SEQR Review
Cortland WWTP Upgrade

To Whom It May Concern,

On February 19, 2013 the Common Council of the City of Cortland passed a resolution declaring the City lead agency on their upcoming wastewater treatment plant upgrade. Attached to this transmittal are the following items:

1. Long Form EAF
2. Project description and Environmental Summary
3. Site Plan of Proposed Improvements (G-2)
4. USGS location of Project

The City has requested that formal comments be made to Bruce Adams Chief Operator, City of Cortland Wastewater Plant, 251 Port Watson Street, Cortland, NY 13045, Phone 607-756-7227 by April 5th of 2013. The City will review those comments at their first meeting in May, and decide if action is appropriate.

Thank you for your time.

Bruce Adams
Chief Operator

Cc: Mayor Tobin w/enclosures
Mack Cook w/enclosures
Kelly Colasurdo w/enclosures
Meghan Gilbert, NYSDEC w/enclosures
Cortland County Planning w/enclosures
City of Cortland Planning w/enclosures
Cortland Co DOH w/enclosures
NYSDOT Regional Office w/enclosures
Ron Entringer, NYSDEC w/enclosures
SHPO w/enclosures
Jim Geiger, NYSEFC w/enclosures
Garry VanGorder w/enclosures
Region 7 Permits Administration w/enclosures
John O'Connell w/enclosures
Ed Poole w/enclosures
Town of Cortlandville
Village of Homer
Village of McGraw

617.20
Appendix A
State Environmental Quality Review
FULL ENVIRONMENTAL ASSESSMENT FORM

Purpose: The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

Full EAF Components: The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project: Part 1 Part 2 Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment, therefore a negative declaration will be prepared.
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED** negative declaration will be prepared.*
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a positive declaration will be prepared.

*A Conditioned Negative Declaration is only valid for Unlisted Actions

CORTLAND WASTEWATER TREATMENT PLANT UPGRADE PROJECT

Name of Action

CITY OF CORTLAND

Name of Lead Agency

BRUCE ADAMS

CHIEF OPERATOR

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from responsible officer)

FEBRUARY 20, 2013

Date

PART 1--PROJECT INFORMATION
Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action CORTLAND WASTEWATERTREATMENT PLANT UPGRADE

Location of Action (include Street Address, Municipality and County)
251 PORT WATSON STREET, CORTLAND NEW YORK 13045 - CORTLAND COUNTY

Name of Applicant/Sponsor CITY OF CORTLAND

Address 25 COURT STREET

City / PO CORTLAND State NY Zip Code 13045

Business Telephone 607-756-7227

Name of Owner (if different) N/A

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

Upgrade of the Cortland Wastewater Treatment Plant

This project is contained to the wastewater treatment plant site and will consist of mainly equipment replacement to improve the solids handling process and compliance with the Chesapeake Bay requirements as promulgated by NYSDEC.

The project will also include construction of a new 40' diameter anaerobic digester, and two small buildings (30' x 50').

All improvements shall be contained to the existing WWTP site.

A site drawing is included.

The current SPDES permit will not need to be modified for the improvements proposed in this project.

Please Complete Each Question--Indicate N.A. if not applicable

A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Other WASTEWATER TREATMENT PLANT

2. Total acreage of project area: 8.8 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>0</u> acres	<u>0</u> acres
Forested	<u>0</u> acres	<u>0</u> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	<u>0</u> acres	<u>0</u> acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	<u>0</u> acres	<u>0</u> acres
Water Surface Area	<u>0</u> acres	<u>0</u> acres
Unvegetated (Rock, earth or fill)	<u>0</u> acres	<u>0</u> acres
Roads, buildings and other paved surfaces	<u>8.8</u> acres	<u>8.8</u> acres
Other (Indicate type) _____	_____ acres	_____ acres

3. What is predominant soil type(s) on project site? Fox Gravelly Silt Loam

- a. Soil drainage: Well drained 100 % of site Moderately well drained _____ % of site.
 Poorly drained _____ % of site
- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? _____ acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? Yes No

a. What is depth to bedrock >60 (In feet)

5. Approximate percentage of proposed project site with slopes:
 0-10% 100 % 10- 15% _____ % 15% or greater _____ %

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? Yes No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? Yes No

8. What is the depth of the water table? 10 (In feet)

9. Is site located over a primary, principal, or sole source aquifer? Yes No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? Yes No

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? Yes No

According to:

Identify each species:

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

Yes No

Describe:

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

Yes No

If yes, explain:

14. Does the present site include scenic views known to be important to the community? Yes No

15. Streams within or contiguous to project area:

West Branch Tioughnioga River, Class: B(T)

a. Name of Stream and name of River to which it is tributary

Chenango River

16. Lakes, ponds, wetland areas within or contiguous to project area:

N/A

b. Size (in acres):

17. Is the site served by existing public utilities? Yes No
- a. If YES, does sufficient capacity exist to allow connection? Yes No
- b. If YES, will improvements be necessary to allow connection? Yes No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? Yes No

20. Has the site ever been used for the disposal of solid or hazardous wastes? Yes No

B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).

- a. Total contiguous acreage owned or controlled by project sponsor: 8.8 acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles: N/A (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. N/A %
- f. Number of off-street parking spaces existing N/A; proposed N/A
- g. Maximum vehicular trips generated per hour: N/A (upon completion of project)?
- h. If residential: Number and type of housing units:

	One Family	Two Family	Multiple Family	Condominium
Initially	_____	_____	_____	_____
Ultimately	_____	_____	_____	_____

- i. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; _____ length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? _____ ft.

2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? <50 tons/cubic yards.

3. Will disturbed areas be reclaimed Yes No N/A

a. If yes, for what intended purpose is the site being reclaimed?

b. Will topsoil be stockpiled for reclamation? Yes No

c. Will upper subsoil be stockpiled for reclamation? Yes No

4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? 0 acres.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

Yes No

6. If single phase project: Anticipated period of construction: 24 months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated _____ (number)

b. Anticipated date of commencement phase 1: _____ month _____ year, (including demolition)

c. Approximate completion date of final phase: _____ month _____ year.

d. Is phase 1 functionally dependent on subsequent phases? Yes No

8. Will blasting occur during construction? Yes No

9. Number of jobs generated: during construction 10 ; after project is complete 0

10. Number of jobs eliminated by this project 0.

11. Will project require relocation of any projects or facilities? Yes No

If yes, explain:

12. Is surface liquid waste disposal involved? Yes No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount SEWAGE, SPDES # NY 002 7561

b. Name of water body into which effluent will be discharged WEST BRANCH TIOUGHNIOGA RIVER

13. Is subsurface liquid waste disposal involved? Yes No Type _____

14. Will surface area of an existing water body increase or decrease by proposal? Yes No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? Yes No

16. Will the project generate solid waste? Yes No

a. If yes, what is the amount per month? <30 tons

b. If yes, will an existing solid waste facility be used? Yes No

c. If yes, give name Cortland Cnty Landfill ; location McGraw, Ny 13101

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes No

e. If yes, explain:

17. Will the project involve the disposal of solid waste? Yes No

a. If yes, what is the anticipated rate of disposal? _____ tons/month.

b. If yes, what is the anticipated site life? _____ years.

18. Will project use herbicides or pesticides? Yes No

19. Will project routinely produce odors (more than one hour per day)? Yes No

20. Will project produce operating noise exceeding the local ambient noise levels? Yes No

21. Will project result in an increase in energy use? Yes No

If yes, indicate type(s)

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day <5000 gallons/day.

24. Does project involve Local, State or Federal funding? Yes No

If yes, explain:

City of Cortland

EFC

NYSERDA

2. What is the zoning classification(s) of the site?

R-1

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

N/A

4. What is the proposed zoning of the site?

Same

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? Yes No

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

Residential, Industrial, Commercial and Agricultural

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? Yes No

9. If the proposed action is the subdivision of land, how many lots are proposed? N/A

a. What is the minimum lot size proposed? _____

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? Yes No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

Yes No

a. If yes, is existing capacity sufficient to handle projected demand? Yes No

12. Will the proposed action result in the generation of traffic significantly above present levels? Yes No

a. If yes, is the existing road network adequate to handle the additional traffic. Yes No

D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name _____ Date _____

Signature _____

Title _____

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 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

General Information (Read Carefully)

- ! In completing the form the reviewer should be guided by the question: Have my responses and determinations been reasonable? The reviewer is not expected to be an expert environmental analyst.
- ! The Examples provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- ! The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- ! The number of examples per question does not indicate the importance of each question.
- ! In Identifying impacts, consider long term, short term and cumulative effects.

Instructions (Read carefully)

- a. Answer each of the 20 questions in PART 2. Answer Yes if there will be any impact.
- b. Maybe answers should be considered as Yes answers.
- c. If answering Yes to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily significant. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the Yes box in column 3. A No response indicates that such a reduction is not possible. This must be explained in Part 3.

	1	2	3
	Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where the depth to the water table is less than 3 feet. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction of paved parking area for 1,000 or more vehicles. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction that will continue for more than 1 year or involve more than one phase or stage. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Construction or expansion of a sanitary landfill.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

NO YES

• Specific land forms:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
------------------------	--------------------------	--------------------------	--

Impact on Water

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law; ECL)

NO YES

Examples that would apply to column 2

• Developable area of site contains a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Extension of utility distribution facilities through a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction in a designated freshwater or tidal wetland.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

4. Will Proposed Action affect any non-protected existing or new body of water?

NO YES

Examples that would apply to column 2

• A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction of a body of water that exceeds 10 acres of surface area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action would change flood water flows | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action may cause substantial erosion. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action is incompatible with existing drainage patterns. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow development in a designated floodway. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON AIR

7. Will Proposed Action affect air quality?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will induce 1,000 or more vehicle trips in any given hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in the incineration of more than 1 ton of refuse per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the amount of land committed to industrial use. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will allow an increase in the density of industrial development within existing industrial areas. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Removal of any portion of a critical or significant wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

9. Will Proposed Action substantially affect non-threatened or non-endangered species?

NO YES

Examples that would apply to column 2

• Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON AGRICULTURAL LAND RESOURCES

10. Will Proposed Action affect agricultural land resources?

NO YES

Examples that would apply to column 2

• The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction activity would excavate or compact the soil profile of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

NO YES

Examples that would apply to column 2

• Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Project components that will result in the elimination or significant screening of scenic views known to be important to the area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?

NO YES

Examples that would apply to column 2

• Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Any Impact to an archaeological site or fossil bed located within the project site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

1
Small to
Moderate
Impact

2
Potential
Large
Impact

3
Can Impact Be
Mitigated by
Project Change

• Other impacts:

Yes No

IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?

NO YES

Examples that would apply to column 2

• The permanent foreclosure of a future recreational opportunity.

Yes No

• A major reduction of an open space important to the community.

Yes No

• Other impacts:

Yes No

IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?

NO YES

List the environmental characteristics that caused the designation of the CEA.

Examples that would apply to column 2

• Proposed Action to locate within the CEA?

Yes No

• Proposed Action will result in a reduction in the quantity of the resource?

Yes No

• Proposed Action will result in a reduction in the quality of the resource?

Yes No

• Proposed Action will impact the use, function or enjoyment of the resource?

Yes No

• Other impacts:

Yes No

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
-------------------------------------	-----------------------------------	--

IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Alteration of present patterns of movement of people and/or goods. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in major traffic problems. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other Impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other Impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Blasting within 1,500 feet of a hospital, school or other sensitive facility. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Odors will occur routinely (more than one hour per day). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will remove natural barriers that would act as a noise screen. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Proposed Action will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?
 NO YES

If Any Action in Part 2 Is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3

Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

Instructions (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is important.

To answer the question of importance, consider:

- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.

CEDARWOOD ENGINEERING SERVICES PLLC

248 Main Street, PO Box 203, North Creek NY 12853 • Phone 518-251-4210 • FAX 518-251-5158

Environmental Information Summary City of Cortland Wastewater Plant Upgrade City of Cortland, NY

General Description

The City of Cortland is upgrading their wastewater treatment plant to comply with new regulatory nutrient standards, improve existing aging systems, and to maximize energy efficiency. The plant is located along with west side of the City of Cortland and borders the Tioughnioga River at the end of Port Watson Street. There has been some form of wastewater treatment system on the site since the 1939, and the site has served the intended use well, as even with the recent floods the plant has survived without any major damage. There is a project location map included in this package.

Construction Scope and Impact

The Construction will consist of various elements which are as follows:

- 1.) Conversion of aeration tanks to a modified nutrient removal process
- 2.) Installation of a new screening device and support equipment
- 3.) Rehabilitation of the existing sludge digesters
- 4.) A new solids handling building constructed near an existing tank (30' x 40')
- 5.) A new anaerobic digester near the current digester complex (40" Diameter)
- 6.) A new building to convert biogas to electricity (20' x 50')
- 7.) Modifications to yard piping to connect all the elements

Of these seven items 1, 2, and 3 are work to be done in the existing tanks for buildings and do not require any excavation or disturbance of soil. Items 4, 5, 6, and 7 are shown on the attached drawing in a red highlight and depict the extent of the proposed construction. As can be seen from this drawing all the construction is within the plant site and no excavation are deeper than 5' – 6'. Groundwater is at approximately 10' below the existing grade.

The construction of all the new facilities are contained in areas that were disturbed in construction during 1978 and some in areas disturbed in 1978 were then disturbed during the 1994 upgrade. There are no virgin areas being excavated.

The affected area is about 20,000 FT² or less than 1 acre so it does not require a SWPPP. In fact there is approximately 3,000 sq.ft. of building or tankage where pervious surfaces are replaced by impervious surfaces. There will be no significant impact on storm water generated on site after the proposed upgrade.

One of the elements of the project is to take biogas produced from the treatment plant sludge and one of the local industries and convert that biogas into electricity and heat to be used on-site, so the utility usage and energy consumption will be reduced. The reduction of energy consumption is a positive environmental aspect of the project.

There is ^{no} impact on wetlands as there ^{are} no wetlands on site.

There should be no change in odor producing processes as they already exist on-site.

There is no land use change required for the project and again all elements are on-site.

There will be an increase in truck traffic, where delivery of off-site waste from a local industry will be made to the biogas digester. This will be about 5-6 trips per/day.

There is no significant change in viewshed as most of the new construction ^{is} alongside existing structure of the same ^{height} or taller. There should be no change in visual impact.

The greatest positive impact ^{is} the compliance with the nutrient goal set forth by NYSDEC and USEPA for waters tributary to the Chesapeake Bay. The enhanced ^{is} treatment will remove both nitrogen and phosphorus to be ⁱⁿ compliance with the new regulations. Non-compliance is just not an option. Again this is a strong environmental positive for the project.

Schedule

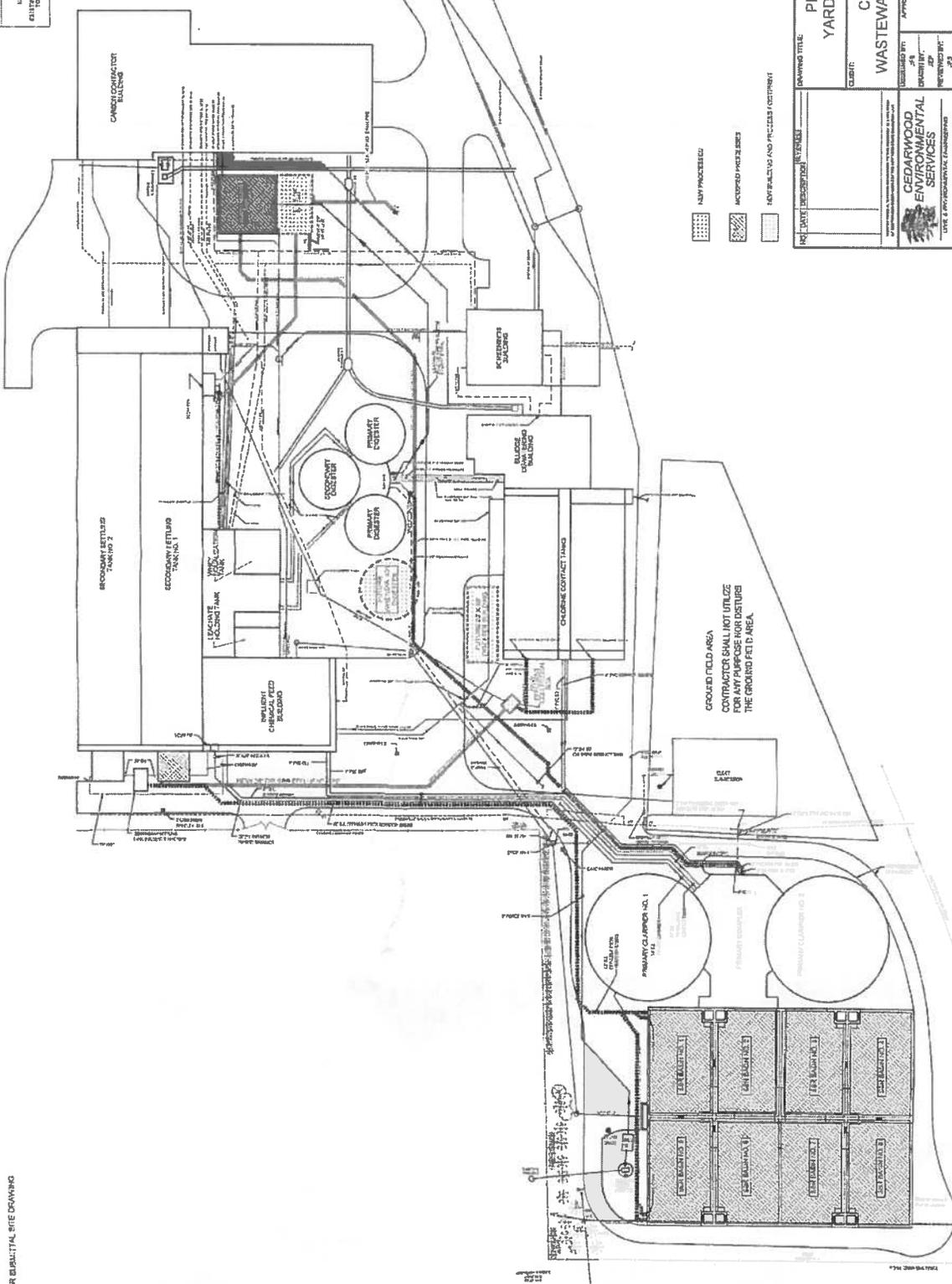
The construction is scheduled to begin in late 2013 and be completed in 2015. As most of the construction will be done in-house, no long periods of noise or dust ^{are} expected due to the majority of the project being completed with the use of existing structures.

GEOR BIURATIAL SITE DRAWING

UPGRADE YARD PIPING LEGEND
 100% UNDERGROUND PROCESS LINES
 50% UNDERGROUND PROCESS LINES
 0% UNDERGROUND PROCESS LINES

FOR PREVIOUS YARD PIPING WORK
 SEE 10/17/03 208 27/20/08

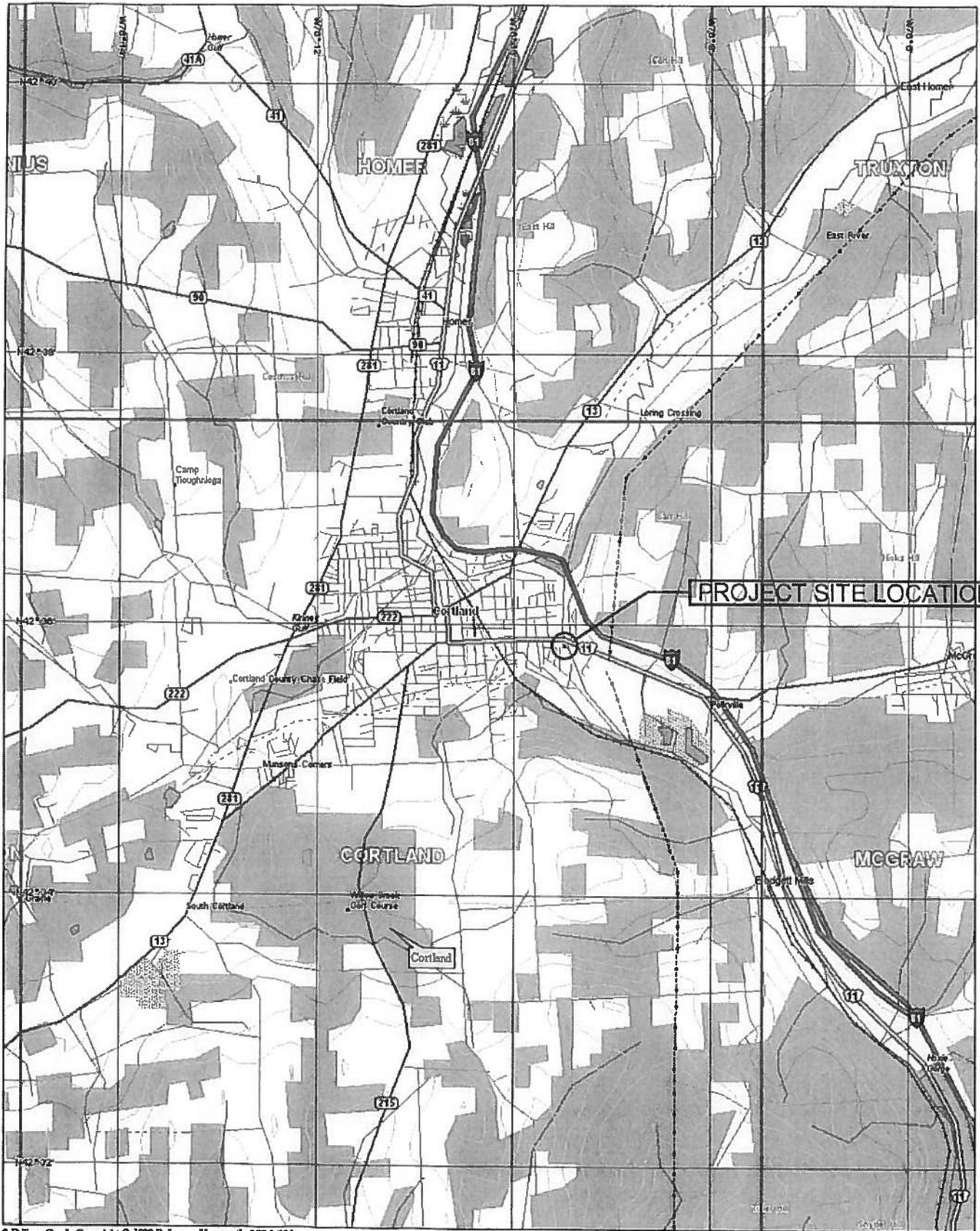
N



- NEW PROCESS LINES
- ACCEPTED PROCESS LINES
- REPLACING AND REPAIRS / OBTAIN

PROPOSED SITE PLAN YARD PIPING MODIFICATIONS	
CITY OF CORTLAND WASTEWATER TREATMENT FACILITY	
DRAWING TITLE: _____ CLIENT: _____	DRAWING NO.: _____ SCALE: AS SHOWN DATE: 05-14-13 DRAWN BY: _____ CHECKED BY: _____
PROJECT NO.: _____ PROJECT NAME: _____	SHEET NO.: _____ SHEET TOTAL: _____ G-2

NOTE: ALL DIMENSIONS FOR LIEY/ PROCESSES SHALL BE LESS THAN 2" IN DEPTH



3-D TopoQuad Copyright © 1999 DeLorme Yarmouth, ME 04096

2/12/13

2000 ft Scale: 1 : 63,750 Detail: 11.5 Datum: WGS84

**CITY OF CORTLAND
WASTEWATER TREATMENT PLANT**

By: Councilor _____
Seconded: Councilor _____

May 21, 2013

BOND RESOLUTION #2 OF 2013

BOND RESOLUTION OF THE CITY OF CORTLAND, NEW YORK, AUTHORIZING THE ISSUANCE OF \$13,500,000 SERIAL BONDS TO FINANCE THE COST OF THE RECONSTRUCTION OF THE CITY'S WASTE WATER TREATMENT PLANT

BE IT RESOLVED by the Common Council of the City of Cortland, New York as follows:

Section 1. The City of Cortland, New York (the "City") is hereby authorized to undertake the reconstruction of the City's Waste Water Treatment Plant, including the acquisition of original furnishings, equipment, machinery or apparatus required at an estimated maximum cost of \$13,500,000 and to issue an aggregate \$13,500,000 in serial bonds pursuant to the provisions of the Local Finance Law to finance the estimated costs of the aforesaid object or purpose.

Section 2. It is hereby determined that the maximum estimated cost of the aforesaid specific object or purpose is \$13,500,000, said amount is hereby appropriated therefor and the plan for the financing thereof shall consist of the issuance of \$13,500,000 in serial bonds (the "Bonds") of the City authorized to be issued pursuant to this Resolution.

Section 3. It is hereby determined that the period of probable usefulness of the aforesaid specific object or purpose is forty (40) years pursuant to paragraph 4 of Section 11.00(a) of the Local Finance Law.

Section 4. Pursuant to Section 107.00(d)(3)(1) of the Local Finance Law, current funds are not required to be provided prior to issuance of the Bonds or any bond anticipation notes issued in anticipation of issuance of the Bonds.

Section 5. The temporary use of available funds of the City, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized pursuant to Section 165.10 of the Local Finance Law, for the capital purposes described in Section 1 of this Resolution.

Section 6. The Bonds and any bond anticipation notes issued in anticipation of the Bonds, shall contain the recital of validity prescribed by Section 52.00 of the Local Finance Law and the Bonds, and any bond anticipation notes issued in anticipation of the Bonds, shall be general obligations of the City, payable as to both principal and interest by a general tax upon all the real property within the City without legal or constitutional limitation as to rate or amount. The faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on the Bonds, and any bond anticipation notes issued in anticipation of the Bonds, and provision shall be made annually in the budget of the City by

appropriation for (a) the amortization and redemption of the Bonds and bond anticipation notes to mature in such year, and (b) the payment of interest to be due and payable in such year.

Section 7. Subject to the provisions of this Resolution and of the Local Finance Law, and pursuant to the provisions of Sections 21.00, 30.00, 50.00 and 56.00 to 63.00, inclusive, of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the Bonds herein authorized, including renewals of such notes, and the power to prescribe the terms, form and contents of the Bonds, and any bond anticipation notes, and the power to sell and deliver the Bonds and any bond anticipation notes issued in anticipation of the issuance of the Bonds, and the power to issue bonds providing for level or substantially level or declining annual debt service, is hereby delegated to the Director of Finance and Administration, the Chief Fiscal Officer of the City.

Section 8. The reasonably expected source of funds to be used to initially pay for the expenditures authorized by Section 1 of this Resolution shall be from the City's General Fund. It is intended that the City shall then reimburse such expenditures with the proceeds of the Bonds and bond anticipation notes authorized by this Resolution and that the interest payable on the Bonds and any bond anticipation notes issued in anticipation of the Bonds shall be excludable from gross income for federal income tax purposes. This Resolution is intended to constitute the declaration of the City's "official intent" to reimburse the expenditures authorized by this Resolution with the proceeds of the Bonds and bond anticipation notes authorized herein, as required by Treasury Regulation Section 1.150-2. Other than as specified in this Resolution, no moneys are reasonably expected to be received, allocated on a long term basis, or otherwise set aside with respect to the permanent funding of the objects or purposes described herein.

Section 9. The serial bonds and bond anticipation notes authorized to be issued by this Resolution are hereby authorized to be consolidated, at the option of the City's Director of Finance and Administration, the Chief Fiscal Officer of the City, with the serial bonds and bond anticipation notes authorized by other Bond Resolutions previously or hereafter adopted by the Common Council for purposes of sale in to one or more bond or note issues aggregating an amount not to exceed the amount authorized in such resolutions. All matters regarding the sale of the bonds, including the date of the bonds, the consolidation of the serial bonds and the bond anticipation notes with other issues of the City and the serial maturities of the bonds are hereby delegated to the Director of Finance and Administration, the Chief Fiscal Officer of the City.

Section 10. The City Director of Finance and Administration, as Chief Fiscal Officer of the City, is further authorized to sell all or a portion of the Bonds, and any bond anticipation notes issued in anticipation of the Bonds, to the New York State Environmental Facilities Corporation (the "EFC") in the form prescribed in one or more loan and/or grant agreements (the "Agreements") between the City and the EFC; to execute and deliver on behalf of the City one or more Agreements, Project Financing Agreements, and Letters of Intent with the EFC and to accept the definitive terms of one or more Agreements from EFC by executing and delivering one or more Terms Certificates; and to execute such other documents, and take such other actions, as are necessary or appropriate to obtain a loan or loans from the EFC for all or a portion of the costs of the expenditures authorized by this resolution, and perform the City's

obligations under its Bonds or bond anticipation notes delivered to the EFC, the Project Financing Agreements and the Agreements.

Section 11. Any federal or New York State grant funds obtained by the City for the capital purposes described in Section 1 of this Resolution shall be applied to pay the principal of and interest on the Bonds or any bond anticipation notes issued in anticipation of the Bonds or to the extent obligations shall not have been issued under this Resolution, to reduce the maximum amount to be borrowed for such capital purposes.

Section 12. The validity of the Bonds authorized by this Resolution and of any bond anticipation notes issued in anticipation of the Bonds may be contested only if:

(a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money; or

(b) the provisions of law which should be complied with at the date of the publication of this Resolution or a summary hereof are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of such publication; or

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

Section 13. The Director of Finance and Administration, as Chief Fiscal Officer of the City, is hereby authorized to enter into an undertaking for the benefit of the holders of the Bonds from time to time, and any bond anticipation notes issued in anticipation of the sale of the Bonds, requiring the City to provide secondary market disclosure as required by Securities and Exchange Commission Rule 15c2-12.

Section 14. The City Director of Finance and Administration, as Chief Fiscal Officer of the City, is hereby authorized to file an application with the New York State Comptroller pursuant to Section 124.10 of the Local Finance Law to exclude the proposed indebtedness authorized herein from the constitutional and statutory debt limits of the City.

Section 15. This Resolution, or a summary of this Resolution, shall be published in the official newspapers of the City for such purpose, together with a notice of the Clerk of the City in substantially the form provided in Section 81.00 of the Local Finance Law.

Section 16. This Resolution is not subject to a mandatory or permissive referendum.

Section 17. The Common Council hereby determines that the provisions of the State Environmental Quality Review Act and the regulations thereunder have previously been satisfied with respect to the expenditures authorized by this Resolution.

Section 18. This Resolution shall take effect immediately upon its adoption.

	<u>Ayes</u>	<u>Nays</u>
Alderman Julie E. Bird	<input type="checkbox"/>	<input type="checkbox"/>
Alderman Kathryn Silliman	<input type="checkbox"/>	<input type="checkbox"/>
Alderman Ken Dye	<input type="checkbox"/>	<input type="checkbox"/>
Alderman John G. Bennett, Jr.	<input type="checkbox"/>	<input type="checkbox"/>
Alderman Daniel E. Quail	<input type="checkbox"/>	<input type="checkbox"/>
Alderman Carl Ferrer	<input type="checkbox"/>	<input type="checkbox"/>
Alderman Linda A. Ferguson	<input type="checkbox"/>	<input type="checkbox"/>
Alderman Thomas Michales	<input type="checkbox"/>	<input type="checkbox"/>

Approved: Ayes _____

Nays _____

In the Matter of the

Application of Mack Cook, Chief Fiscal Officer of the City of Cortland, for a certificate of the State Comptroller authorizing the exclusion pursuant to Section 124.10 of the Local Finance Law of certain sewage indebtedness.

1. This application is made pursuant to the provisions of Section 124.10 of the Local Finance Law and is made by Mack Cook, the Director of Administration and Finance and Chief Fiscal Officer of the City of Cortland in the exercise of his discretion as such fiscal officer.
2. The current fiscal year of such municipality commenced on January 1, 2013, and will end on December 31, 2013.
3. The proposed facilities consist of the reconstruction of the Waste Water Treatment Plant of the City of Cortland, Cortland County, New York and other incidental expenses as authorized by the bond resolution dated May 7, 2013. Such facilities are estimated at a maximum cost of \$13,500,000 and will be owned by the City. The facilities are expected to be placed in operation on November 1, 2016.
4. No previous application has been filed pursuant to Section 124.10 of the Local Finance Law for the exclusion of the same indebtedness hereby sought to be excluded.
5. No exclusion of indebtedness pursuant to Section 123.00 of the Local Finance Law has been granted for the same indebtedness hereby sought to be excluded.
6. The indebtedness sought to be excluded in this proceeding is in the total amount of \$13,500,000 and is described in the verified itemized statement hereto annexed and made a part hereof.
7. Indebtedness to be evidenced by bonds is estimated to be \$13,500,000, the proceeds of which will be expended to pay costs of the reconstruction of the City's sanitary sewage system. The proposed maturity schedule for the serial bonds to be issued is annexed hereto and made a part hereof as Schedule A. Debt service on the proposed bonds is to be paid from sewer rents.
8. A grant from the New York State Energy Research and Development Authority in the amount of \$1,000,000 is expected to be received by the City for the proposed facilities. The grant funds obtained by the City will be applied to pay the principal and interest on the indebtedness for the proposed facilities, or to the extent indebtedness has not been incurred to reduce the maximum sum to be borrowed. No other State or Federal grants are expected to be received by the City for the proposed facilities.

9. The revenues, if any, of such facilities, during the period of which the exclusion is effective, will be applied to and actually used for the payment of all costs of operation, maintenance and repairs and the payment of the amounts required for the interest on and amortization of or redemption of such indebtedness, or such revenue shall be deposited in a special fund to be used solely for such payments.

WHEREFORE, the foregoing chief fiscal officer hereby requests the State Comptroller to issue his written certificate setting forth his determination excluding the indebtedness of such municipality proposed to be contracted as described in the annexed verified itemized statement, from the limitations imposed by Section 4 of the Article VIII of the Constitution and Section 104.00 of the Local Finance Law in relation to the power of the municipality to contract indebtedness.

Dated: May __, 2013

Director of Administration and Finance of
the City of Cortland, New York

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

Mack Cook being duly sworn, deposes and says that he is the duly appointed, qualified, and acting chief fiscal officer of the City of Cortland, in the County of Cortland, New York; that he prepared and has read the foregoing application and knows the contents thereof, that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

Mack Cook, Director of Administration
and Finance
City of Cortland
25 Court Street
Cortland, New York 13045

Subscribed and sworn to before me
this ___ day of May, 2013.

Notary Public

ITEMIZED STATEMENT

Following is an itemized statement of OUTSTANDING indebtedness by the City of Cortland on or after January 1, 1962 and prior to January 1, 2014 for the construction or reconstruction of the facilities mentioned in paragraph 3 of the foregoing application:

BONDS, BOND ANTICIPATION NOTES, AND CAPITAL NOTES

<u>Type of Obligation</u>	<u>Original Principal Amount</u>	<u>Date of Issue</u>	<u>Date of Final Maturity</u>	<u>Interest Rate</u>	<u>Dates of Principal Payments</u>	<u>Date of Interest Payments</u>	<u>Amount of Issue as of Date of Application</u>
NONE							

Following is an itemized statement of indebtedness PROPOSED TO BE CONTRACTED by the City of Cortland on or after January 1, 1962 and prior to January 1, 2014 for the construction or reconstruction of the facilities mentioned in paragraph 3 of the foregoing application:

BONDS, BOND ANTICIPATION NOTES, AND CAPITAL NOTES

<u>Type of Obligation</u>	<u>Original Principal Amount</u>	<u>Approx. Date of Issue</u>	<u>Approx. Date of Final Maturity</u>	<u>Estimated Interest Rate</u>	<u>Estimated Dates of Principal Payments</u>	<u>Estimated Date of Interest Payments</u>
BAN ¹	\$1,000,000 to \$10,000,000	9/1/13; 11/1/13	11/1/13; 9/1/15	1.0% 0.0%	11/1/13 9/1/15	11/1/13 N/A
SB ²	\$13,500,000	9/1/15	9/1/45	2.25%	9/1	3/1; 9/1

CONTRACT INDEBTEDNESS

Following is a description of each item of OUTSTANDING CONTRACT INDEBTEDNESS incurred on or after January 1, 1962 and prior to January 1, 2014 which remain unpaid as of the date of this application, and which is not also evidenced by outstanding obligations listed previously on this statement:

¹ An approximately \$1,000,000 bond anticipation note is anticipated to be issued in Summer 2013. This note will be repaid thru a bond anticipation note (grid note) to be sold to the New York State Environmental Facilities Corporation (EFC) which will provide construction financing.

² Serial bonds to be issued to EFC in connection with the 2015 EFC summer pool program.

<u>Date of Contract</u>	<u>Names of Contract Creditors</u>	<u>Amount</u>
NONE		

CONTRACT INDEBTEDNESS

Following is a description of each item of contract indebtedness PROPOSED TO BE INCURRED on or after January 1, 1962 and prior to January 1, 2014.

<u>Approximate Date of Contract</u>	<u>Names of Contract Creditors (if Available)</u>	<u>Proposed Amount</u>
	Various	<u>\$13,500,000</u>
	TOTAL	<u>\$13,500,000</u>

Dated: May __, 2013

 Director of Administration and Finance
 of the City of Cortland

SCHEDULE A

"ESTIMATED DEBT SERVICE SCHEDULE"
 EFC Financing
CITY OF CORTLAND
 Wastewater Treatment Plant Improvements Project
 Level Debt
 30 years

Fiscal Year Ending 31-Dec	Balance Beginning Fiscal Year	Principal Due 1-Sep	Coupon Per Maturity	First Interest Payment Due 1-Mar	Second Interest Payment Due 1-Sep	Total Principal and Interest
2016	13,500,000	320,000	2.250%	151,875.00	151,875.00	623,750.00
2017	13,180,000	327,000	2.250%	148,275.00	148,275.00	623,550.00
2018	12,853,000	335,000	2.250%	144,596.25	144,596.25	624,192.50
2019	12,518,000	342,000	2.250%	140,827.50	140,827.50	623,655.00
2020	12,176,000	350,000	2.250%	136,980.00	136,980.00	623,960.00
2021	11,826,000	358,000	2.250%	133,042.50	133,042.50	624,085.00
2022	11,468,000	366,000	2.250%	129,015.00	129,015.00	624,030.00
2023	11,102,000	374,000	2.250%	124,897.50	124,897.50	623,795.00
2024	10,728,000	382,000	2.250%	120,690.00	120,690.00	623,380.00
2025	10,346,000	391,000	2.250%	116,392.50	116,392.50	623,785.00
2026	9,955,000	400,000	2.250%	111,993.75	111,993.75	623,987.50
2027	9,555,000	409,000	2.250%	107,493.75	107,493.75	623,987.50
2028	9,146,000	418,000	2.250%	102,892.50	102,892.50	623,785.00
2029	8,728,000	427,000	2.250%	98,190.00	98,190.00	623,380.00
2030	8,301,000	437,000	2.250%	93,386.25	93,386.25	623,772.50
2031	7,864,000	447,000	2.250%	88,470.00	88,470.00	623,940.00
2032	7,417,000	457,000	2.250%	83,441.25	83,441.25	623,882.50
2033	6,960,000	467,000	2.250%	78,300.00	78,300.00	623,600.00
2034	6,493,000	477,000	2.250%	73,046.25	73,046.25	623,092.50
2035	6,016,000	488,000	2.250%	67,680.00	67,680.00	623,360.00
2036	5,528,000	499,000	2.250%	62,190.00	62,190.00	623,380.00
2037	5,029,000	510,000	2.250%	56,576.25	56,576.25	623,152.50
2038	4,519,000	522,000	2.250%	50,838.75	50,838.75	623,677.50
2039	3,997,000	534,000	2.250%	44,966.25	44,966.25	623,932.50
2040	3,463,000	546,000	2.250%	38,958.75	38,958.75	623,917.50
2041	2,917,000	558,000	2.250%	32,816.25	32,816.25	623,632.50
2042	2,359,000	570,000	2.250%	26,538.75	26,538.75	623,077.50
2043	1,789,000	583,000	2.250%	20,126.25	20,126.25	623,252.50
2044	1,206,000	596,000	2.250%	13,567.50	13,567.50	623,135.00
2045	610,000	610,000	2.250%	6,862.50	6,862.50	623,725.00
TOTAL		\$13,500,000		\$2,604,926.25	\$2,604,926.25	\$18,709,852.50

¹ Bonds planned to be issued as part of the Environmental Facilities Corporation Clean Water Summer Pool. Maturity schedule will be structured so as to provide substantially level or declining annual debt service payment in accordance with Section 21.00(d) of the Local Finance Law. Actual principal payments will be rounded up to the nearest increment of \$5,000 for purpose of sale.

ESTOPPEL NOTICE

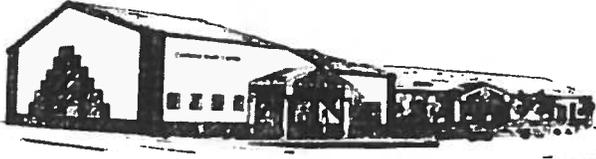
The Bond Resolution, a summary of which is published herewith, has been adopted on the 21st day of May, 2013, and the validity of the obligations authorized by such Bond Resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the City of Cortland, Cortland County, New York, is not authorized to expend money or the provisions of law which should have been complied with as of the date of publication of this notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of publication of this notice, or such obligations were authorized in violation of the provisions of the Constitution.

Summary of Bond Resolution

1. Class of Objects or Purposes - The reconstruction of the City's Waste Water Treatment Plant, including the acquisition of original furnishings, equipment, machinery or apparatus.
2. Period of Probable Usefulness – forty (40) years.
3. Maximum Amount of Obligations to be Issued - \$13,500,000.

The Bond Resolution herein summarized shall be available for public inspection during normal business hours for twenty (20) days following the date of publication of this notice at the office of the City Clerk at City Hall, 25 Court Street, Cortland, New York.

Judith Chamberlin, Clerk, City of Cortland,
Cortland County, New York



CORTLAND YOUTH BUREAU

35 Port Watson Street • Cortland, NY 13045 • (607) 753-3021 • Fax: (607) 753-3023 • www.cortland.org

TO: Mayor Brian Tobin
Members of the City Council
Mack Cook, Director of Administration and Finance
Lori Crompton, Finance Department

FROM: John McNerney, Youth Bureau Director

RE: May donations

DATE: May 8th, 2013

I would like to ask the common council to pass the following resolution on May 21, 2013.

Consideration of a resolution to approve donations and deposit funds into the Cortland Youth Bureau operating budget. Donated funds will be added to the following budget lines:

Donation	Amount	Budget Line	Reason
Cortland Rotary Club	\$1,440.00	7110.5206	Shelter Painting
Mike Dexter	\$250.00	7110.5206	Dexter Fence
Todd & Michelle Funk	\$500.00	7330.5400	Youth Center Kitchen Program

See the attached copies of checks and notes relating to the donations. Feel free to contact me with any questions at 753-3021 ext.23.





CORTLAND ROTARY CLUB
P. O. BOX 5248
CORTLAND, NY 13045

Alliance Bank^{NA}
50-351-213



DATE
4-30-13

AMOUNT
1440.00

PAY TO THE ORDER OF

Cortland Youth Bureau
Fourteen hundred forty and

00
00

Donald R. Kline

AUTHORIZED SIGNATURE

Rotary Shelter Fund

Security features. Details on back.

6081805511; 301 00239 2

MICHAEL J. DEXTER
10 CEDAR ST. PH. 807-753-0456
CORTLAND, NY 13045

50-351/213

2107

DATE

4/29/2013



PAY TO THE ORDER OF

Cortland Youth Bureau \$250.00
Two Hundred Fifty

DOLLARS



Security Features
Details on Back

Alliance Bank^{NA}

MEMO

"Dexter Park"

Michael J. Dexter

TODD M. FUNK
MICHELLE L. FUNK
6910 VALLEY BROOK DRIVE
FALLS CHURCH, VA 22042

15-7434/2540

1643

DATE

4/17/13

PAY TO THE ORDER OF
CORTLAND YOUTH BUREAU \$500.00

FIVE HUNDRED +

XX
00

DOLLARS



Security Features
Details on Back

CONGRESSIONAL
FEDERAL

703.884.8300
800.481.2388

FOR

YOUTH CENTER

Todd Funk

6081805511; 301 00239 2

141077

CUSTOMER'S ORDER NO.

DEPARTMENT

DATE

9-23-13

NAME

ADDRESS

CITY, STATE, ZIP

SOLD BY

CASH

C.O.D.

CHARGE

ON ACCT.

MOISE RETD.

PAID OUT

Conthans Youth Bureau

35 Port Watson St.

Corthland NY 13045

DESCRIPTION

PRICE

AMOUNT

SUGGEST PINK PAW

14400

Rotary Shelter Painting

thanks

Wm Sr

SPROUSE PAINTING

Wade Sprouse

3920 Bells Mills Rd.

Traxton, NY 13158

RECEIVED BY

KEEP THIS SLIP FOR REFERENCE

adams
GRANT

Todd and Michelle Funk
6910 Valley Brook Drive
Falls Church, VA 22042
703-536-2724

April 17, 2013

Ms. Erica Danega
Youth Services Supervisor
Cortland Youth Bureau
35 Port Watson Street
Cortland, NY 13045

Dear Ms. Danega:

Please find enclosed a donation for the Cortland Youth Bureau in the amount of \$500 in support of your Youth Center programs.

Sincerely,



Todd Funk

Enclosure

Please deposit into line
7330.400 for use towards
our kitchen program at the
Youth Center.

Thanks,
Erica

We've had the kids create
a thank you card to mail
to Todd & Michelle.



CORTLAND YOUTH BUREAU

35 Port Watson Street • Cortland, NY 13045 • (607) 753-3021 • Fax: (607) 753-3023 • www.cortland.org

TO: Mayor Brian Tobin
Members of the City Council
Mack Cook, Director of Administration and Finance
Lori Crompton, Finance Department

FROM: John McNerney, Youth Bureau Director

RE: Wickwire Pool Trust Fund Deposit

DATE: May 10, 2013

As you are fully aware the Wickwire Pool Fundraising committee has been busy seeking donation for the renovation of Wickwire Pool. I would like to ask the common council to accept and recognize the following donations from local business and individuals:

<i>Donation</i>	<i>Amount</i>
<i>Crown City Rollerz</i>	<i>\$447.00</i>
<i>Jon Finkelstein</i>	<i>\$ 25.00</i>
<i>Total Donations =</i>	<i>\$472.00</i>

Funds should be deposited into the Wickwire Pool Trust Fund. Attached are copies of the checks. Feel free to contact me with any questions at 753-3021 ext.23.



CROWN CITY ROLLERZ

50-264/213

1256

53 W MAIN ST. Box 324
COSTLAND, NY 13048

DATE April 15, 2013

PAY TO THE ORDER OF

Wickwire Pool Trust fund

\$ 447.00

four hundred, forty-seven & 00/100

DOLLARS

TOMPKINS TRUST COMPANY

MEMO

Wickwire Pool

Jeff Adams

1256

JON K. FINKELSTEIN 02-12
5143 MANERDALE DR. SE
SMYRNA, GA 30080-7407

64-9238 43181
610

208

DATE 4/17/13

PAY TO THE ORDER OF

THE Wickwire Pool Fund

\$ 25.00/100x

Twenty Five AND 00/100x

DOLLARS

CHASE

JPMorgan Chase Bank, N.A.
www.Chase.com

Jon K. Finkelstein

MEMO

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CORTLAND AND THE PROFESSIONAL
WASTEWATER OPERATORS ASSOCIATION**

This is a Memorandum of Understanding concerning the 2014-2016 collective-bargaining agreement between the City of Cortland, New York ("City") and Professional Wastewater Operators Association ("PWOA"). This agreement has been reached through the process of collective bargaining and is based on the following recitations:

Whereas: The City and the PWOA are parties to a collective bargaining agreement that expires December 31, 2013 which agreement was reached through the process of collective bargaining

Whereas: The City and the PWOA desire to continue the contractual relationship upon mutually agreeable terms and conditions;

Whereas: after negotiations between the parties, the City and the PWOA desire to entered into a collective bargaining agreement commencing January 1, 2014 and ending December 31, 2016

Therefore, the parties agree as follows:

1. Article 4-Management Rights, Section 5. Outside Employment; the term '411/911 Spectre Alarm' is replaced with the term 'automated'.
2. Article 4-Management Rights, Section 6. Attendance-Tardiness; the phase 'if possible' is added.
3. Article 4-Management Rights, Section 6. Attendance-Daily Notification; the phase 'if possible' is added.
4. Article 4-Management Rights, Section 6. Attendance-Unscheduled Absences; the phase 'if possible' is added.
5. Article 5-Bargining Unit, Section 2. Bargaining Unit Work, paragraph (i); the phase 'counties and commercial concerns' is added.
6. Article 5-Bargining Unit, Section 2. Bargaining Unit Work, paragraph (i); the phase 'for sludge removal' is removed.
7. Article 7-Disciplinary Action, Section 3. Progressive Discipline the phase 'for which the City has zero tolerance' is added.
8. Article 11-Wages and Hours, Section 2, Paragraph A is amended to read as follows:

Employees hired before January 1, 2014 shall receive the following increases in their hourly pay rate on the date indicated:

1/1/2014	1%
1/1/2015	1%
1/1/2016	1%

9. Article 11-Wages and Hours, Section 2, Paragraph A is amended to read as follows:

The following minimum hourly wage shall prevail for employees hired on or after January 1, 2014,

Title	Effective 1/1/2014	Effective 1/1/2015	Effective 1/1/2015
Wastewater Treatment Plant Operator II	\$19.13	\$19.32	\$19.51
Wastewater Treatment Plant Operator II	\$17.59	\$17.77	\$17.94
Operator Trainee	\$17.09	\$17.26	\$17.43
Wastewater Treatment Plant Maintenance Mechanic	\$20.40	\$20.60	\$20.81
Laborer	\$15.94	\$16.10	\$16.26

10. Article 11-Wages and Hours, Section 4. Emergency Work and Alarms: the phrase 'equivalent straight time' is added is added to read are follows:

11. Article 11-Wages and Hours, Section 5. is added to read are follows:

Section 5. All employees covered by this Agreement shall be entitled to longevity increases as follows:

- \$700 after 5 years of service*
- \$800 after 6 years of service*
- \$900 after 7 years of service*
- \$1,000 after 8 years of service*
- \$1,100 after 9 years of service*
- \$1,200 after 10 years of service*
- \$1,300 after 11 years of service*
- \$1,400 after 12 years of service*
- \$1,500 after 13 years of service*
- \$1,600 after 14 years of service*
- \$1,775 after 15 years of service*
- \$1,875 after 16 years of service*
- \$1,975 after 17 years of service*
- \$2,075 after 18 years of service*
- \$2,175 after 19 years of service*

Longevity shall be accumullated on a continous, uninterrupted service basis, not including authorized leave of absence. The forgoing longevity schedule shall be non-cumulative. i.e., there shall be no carry-forward or pyramiding of longevity

The total longevity will equal \$2,175.00 above the base salary after 19 years of continous service

Employees shall become eligible for the appropriate longevity pay on their anniverary date.

12. Article 11 Wages and Hours, Section 6. Compensatory Time is amended to read as follows:

Employees may accumulate up to thirty-two (32) hours of compensatory time. Compensatory time will accumulate at the same rate as overtime. In the event that the employee accrues more than thirty-two (32) hours in compensatory time, the employee must take paid overtime. If at the end of any pay period the employee has accrued more than thirty-two (32) hours in compensatory time, the employee will be paid for the excess amount at the employee's regular rate of pay. All compensatory time earned must be used within ninety days (90) days of the date that it is earned.

13. Article 11-Wages and Hours, Section 7. Training/Safety Coordinator is eliminated.

14. Article 12-Health and Welfare, Section 1. Health Insurance is amended to read as follows:

The City shall provide each active employee and his/her eligible family with medical and hospital insurance in accordance with current benefit levels (effective December 31, 2013). Coverage shall begin on the first of the month more than thirty days after employee's hire date.

15. Article 12-Health and Welfare, Section 2. Employee Contribution. Employees contributions for those hired prior to December 31, 2014 during the term of the contract are:

As of January 1, 2014	20%
As of January 1, 2015	20%
As of January 1, 2016	20%

New employees hired on or after December 31, 2014 will contribute 24%.

16. Article 12-Health and Welfare, Section 4. Opting Out, Opt out payments are \$3,500 per year for family coverage and \$2,500 per year for individual coverage

17. Article 12-Health and Welfare, Section 5. Retiree Insurance is amended to read as follows:

For employees hired before January 1, 2014: Coverage under a medical insurance and prescription drug plan made available through the City will continue until the retiree meets the eligibility criteria for Medicare coverage, at which time primary coverage will be provided by Medicare.

The City will not reimburse a retiree for the cost of the Medicare Part B premium.

If the employee has accumulated 325 or more sick days at the time of retirement and not yet eligible for Medicare coverage those days may be converted to retirement health insurance for the employee and his spouse at the time of the employee's retirement. All of the sick days accumulated (including the days in excess of 325) must be surrendered. The days in excess of 325 shall have no cash value. An employee who qualifies for the retirement health insurance coverage will be responsible for paying the same percentage toward the payment of the premium that the employee was required to make on the date of the employee's retirement. Failure to make the monthly contributions will result in termination of coverage.

For employees hired on or after January 1, 2014: The City shall allow employees who retire from the City and their eligible spouses the option to enroll in the City's health insurance plan. The cost of any such coverage shall be borne fully by the employee.

18. Article 12-Health and Welfare, Section 7. Fitness Facility Membership is added to read as follows:

Employees will be reimbursed for fitness facility membership or participation in structured classes such as strength training, yoga, or pilates. All classes must be held at a certified facility. Employees will be reimbursed for pre-paid, completed, and consecutive 6 or 12 month membership or participation. A receipt or statement of payment from the facility must be submitted with the request for reimbursement no later than 30 days after the completion of membership or classes. Amount of reimbursement: \$100.00 for 6 months; \$200.00 for 12 months.

19. Article 14-Vacation, Section 1. Vacation is amended so that three weeks of vacation (120 hours) will be granted after 7 full years of continuous service.
20. Article 14-Vacation, Section 3. Forfeiture of Vacation is eliminated.
21. Article 16-Leave, Section 2. Funeral Leave is amended to add the phase 'in-laws'.
22. Article 16-leave, Section 3. Sick Leave is amended to read as follows:

Employees hired before July 1, 2011 receive 1 1/2 sick days per month which shall be credited as earned. Sick days may be carried over from year to year. There is no limit to the number of sick days which may be carried over. Upon retirement, an employee may convert accumulated sick leave for retiree health insurance as provided herein or to cash at the rate of one day's pay for each four days of sick leave surrendered.

Employees hired after July 1, 2011 receive 1 paid sick days per month which shall be credited as earned. Employees hired after the execution of this Agreement may accrue sick leave for two years only after which time the employee can sell back unused time at the employee's regular rate of pay. Any unused time not sold back to the City shall be forfeited.

New employees become eligible to accrue sick leave on the first day of the month after completion of thirty (30) calendar days of employment. The amount of sick leaves credited to new employees shall be prorated by the amount of calendar year remaining when the entitlement accrues.

Proper use of sick leave by any eligible employee includes personal illness of the employee or an employee's visit to the doctor or dentist or other recognized medical practitioner.

23. Article 18-Workforce Reduction Limitation is added to read as follows:

During the term of this Agreement no employee who is a member of this bargaining unit at the time of ratification by both parties shall be terminated due to budgetary reasons or abolition of programs, but only for unsatisfactory job performance as provided for under the disciplinary procedure. In addition, no bargaining unit member at the time of ratification of this Agreement shall be laid off due to reduction in the workforce due to budgetary reasons or abolition of programs. Employees hired on or after January 1, 2014 or vacant positions shall not be subject to this section.

24. What was Article 18-Legislative Action in the current contract is amended to be Article 19- Legislative Action

IN WITNESS WHEREOF, the parties hereto have set their hands this ____day of May, 2013

For the City:

For the PWOA

Mayor Brian Tobin

Mr. Thomas McCall, President

Mr. Bruce Adams, Plant Operator

Mr. Edward Poole, Negotiating Member

2013 Downtown Parking Permit Improvement Proposal

The Cortland Downtown Partnership (CDP) is very thankful for the City of Cortland's support and interest in collaborating on projects to enhance the cultural and commercial offerings of the Central Business District. Since the CDP's formation, in 2006, Cortland has seen a renewed interest in downtown that has led to significant improvements in two of the most important indicators of an urban core's economic health; first floor vacancy rates and residential and commercial upper floor development. In order to maintain and increase this momentum we need to update our downtown's parking permit program to eliminate barriers to some of the more challenging properties downtown and encourage additional development.

Throughout the course of the Cortland Downtown Partnership's seven-year management of the City Parking Permit Program the CDP has implemented many internal improvements such as awareness campaigns, and improved hang tag design. Common Council approval of the following items for immediate implementation will further improve the parking permit policy to increase accessibility, decrease vacancy and encourage upper floor residential development.

- I. Allow an incremental expansion of **Downtown Resident spaces** closest to residential areas. For \$360 annually Downtown Resident permit holders will have access to reserved sections to park their vehicles 24 hrs/7 days a week, regardless of even/odd rules excluding designated snow removal months when they will revert to odd/even. Spaces will be denoted by signage and/or paint designation at the discretion of the DPW and Public Safety. Cost for sign creation and installation could be deducted from the City portion of permit parking revenue, or handled by the CDP if all of the program's proceeds are turned over to the organization.

Downtown Resident space breakdown: Designate 13 spaces along Groton Ave. in the lot as reserved, 6 spaces in the Williams St. lot, 16 spaces in the Marketplace Mall lot, 28 spaces on Haskell Place and 10 spaces along the CVS side of the Youth Bureau parking lot. The CDP will begin to take reservations for the spaces upon approval by Common Council and coordinate an incremental approach to adding reserved spaces and signage with the DPW. Space designation by signage and/or paint will be at the discretion of the DPW and Public Safety and should allow joint towing enforcement by permit holders and City parking enforcement staff. Permit holders will be designated by the addition of a sticker to the existing permit.

- II. **Convert all of the 82 "NO OVERNIGHT PARKING"** spaces in Groton/Hollywood lot, excluding handicap spaces, to odd and even – split evenly.

AMERICAN ARBITRATION ASSOCIATION

CITY OF CORTLAND,

Employer,

And

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, CORTLAND
COUNTY LOCAL 812,

AAA Case No.
15 390 00581 12

Eric W. Lawson, Arbitrator

Union.

(Howard Thomas Overtime Grievance)

EMPLOYER'S BRIEF

HISCOCK & BARCLAY, LLP

Attorneys for the Employer

City of Cortland

Office and Post Office Address

One Park Place

300 South State Street

Syracuse, New York 13202

Telephone: (315) 425-2700

Of Counsel

Alan R. Peterman

Agreement, and the City does not believe there was any such violation, the Union failed to prove damages with any degree of certainty. The grievance, therefore, should be denied.

PROPOSED ISSUES

The City and the Union could not agree on the issues to present to the Arbitrator but did agree to allow the Arbitrator to frame the issues. The City proposes the following issues:

1. Whether the City of Cortland violated Article VI, Section 2(a) of the Collective Bargaining Agreement with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Cortland County Local 812, by allowing a volunteer clean up of the sidewalks of downtown Cortland on July 21 and 22, 2012.
2. If so, what shall the remedy be?

The Union's proposed issue does not specify the sections of the Agreement allegedly violated by the City. During the Arbitration, the only specific section that could be cited by the Union was Article IV, Section 2(a) of the Agreement. The Issue before the arbitrator should be limited to the claimed violation of that Section of the Agreement.

APPLICABLE CONTRACT SECTIONS

The City submits that the following contract sections are applicable to the issues in this grievance:

ARTICLE VI

Section 2. Overtime

A. Available overtime shall be assigned by department [sic] to employees who normally perform such work under the supervisor responsible for assigning overtime. Overtime will not be assigned outside the department unless departmental employees are not available or decline available overtime.

may challenge the arbitrator's decision in accordance with Article 78 or the CPLR

5. All responses from any representative(s) of the City shall be made in writing with a copy to the grievant and to the Association grievance representative.
6. In the event that the parties reach a satisfactory resolution to the grievance, the parties shall reduce such agreement to writing, have it duly signed by the Association and the City, and shall distribute copies of the agreement to all affected parties including the grievant.
7. The parties may, by mutual agreement in writing, extend the time periods set forth above for responding to or appealing a grievance.

ARTICLE XIV

Section 3. Management Responsibility

It is recognized that the management of the department, the control of its properties and the maintenance of order and efficiency are solely responsibilities of the City. Accordingly, the City retains all rights, except as they may be specifically modified in this agreement, including, but not limited to selection and direction of the working forces: to hire, suspend or discharge for cause, to make reasonable any binding rules, which shall not be inconsistent with this agreement; to assign promote or transfer; to determine the amount of overtime worked, to relieve employees from duty due to lack of work or for other legitimate reasons; to decide on the number and location of facilities, stations, etc., to determine the work to be performed, amount of supervision necessary, equipment, methods, schedules, together with the selection, procurement, designing, engineering and the control of equipment and materials; and to purchase services of others, contract or otherwise.

STATEMENT OF FACTS

The testimony and exhibits presented to the Arbitrator demonstrate the following facts relevant to this Arbitration. Sometime prior to July 13, 2012, Julie Bird, an Alderman on City Council, decided to organize a voluntary clean up of the sidewalks on Main Street in anticipation of the arrival of the New York Jets for their training camp. Ms. Bird publicized the clean up in various ways, including an e-mail to various City employees. That e-mail stated that:

on the sidewalks. Although at least two City employees participated in the clean up on Saturday, they were not paid for that time.

On Sunday, the Fire Department hosed down the sidewalks using Fire Department trucks and hoses. The firefighters that hosed down the sidewalks were part of the normal staffing for Fire Station No 2 that day. No other City employees were paid for any of the activities on July 21 or June 22.

ARGUMENT

THE GRIEVANCE MUST BE DENIED

The Union's grievance must be denied. Contrary to the charge in the grievance, the City did not direct City employees to clean up Main Street on July 21 or 22. The cleanup was a volunteer effort organized by a City Alderperson. As such, the cleanup cannot be considered to be covered by the Agreement between the parties.

In addition, the work done as part of the cleanup is not "bargaining unit work" as alleged by the grievance. Initially, "bargaining unit work" is not defined by the Agreement. In addition, the Department of Public Works does not have responsibility for cleaning the sidewalks in the City. That responsibility falls on the property owners pursuant to the City Code. Finally, to the extent that street cleaning can be considered a duty routinely performed by Department of Public Works employees, under the provisions of the Agreement, the City has the authority to determine what work is to be performed by bargaining unit employees. Absent any violation of any provision of the collective bargaining agreement between the parties, the Union's grievance must be denied.

Administrator, testified concerning the maintenance of planting beds in the City by the local garden club and other volunteers, including himself. Although such activities have been ongoing, the Union has not claimed any violation of the Agreement.

The Union relies on Article IV, Section 2 of the Agreement to support its grievance. That Section states that:

Available overtime shall be assigned by department [sic] to employees who normally perform such work under the supervisor responsible for assigning overtime. Overtime will not be assigned outside the department unless departmental employees are not available or decline available overtime.

The Union, however, has failed to demonstrate that any “available overtime” existed. Once again, the work done on July 21 and 22 was done by volunteers. No City employee was engaged in the activity as such, save the firefighters. Nor has the Union demonstrated that any overtime was assigned outside of the department as the result of the clean up done on July 21 and 22. The Union’s grievance should be denied.

POINT II

THE GRIEVANCE MUST BE DENIED BECAUSE THE WORK PERFORMED AS PART OF THE CLEAN UP IS NOT ROUTINELY PERFORMED BY THE DEPARTMENT OF PUBLIC WORKS

The grievance must also be denied because the work performed on July 21 and July 22 was not the responsibility of the Department of Public Works. Although the grievance filed references “bargaining unit work,” there is no provision in the Agreement that expressly defines “bargaining unit work.” Faced with that conundrum, the Union argues that the Department of Public Works is the only Department within the City that cleans streets. Assuming that is the

operation of a sweeper. See Union Exhibits 1 and 2. Nothing in those descriptions, however, indicate that the Motor Equipment Operators have any responsibility for cleaning sidewalks.

The Union also offered a photograph from the local newspaper allegedly showing a City employee cleaning Main Street. Mack Cook, who participated in the clean up, testified that any debris being removed from the street was the result of the cleanup of the sidewalks⁵. Any cleaning of the street, therefore, must be considered incidental to the cleaning of the sidewalks. Absent the performance of work normally performed by the Department of Public Works, the Union's grievance must be denied.

Finally, even if cleaning of the sidewalks could be considered the responsibility of the Department of Public Works, the Agreement between the City and the Union gives the City the discretion to modify that responsibility. Article XVI, Section 3 of the Agreement, Management Responsibility, of the Agreement states that

It is recognized that the management of the department, the control of its properties and the maintenance of order and efficiency are solely responsibilities of the City. Accordingly, the City retains all rights, except as they may be specifically modified in this agreement, including, but not limited to selection and direction of the working forces; to hire, suspend or discharge for cause, to make reasonable any binding rules, which shall not be inconsistent with this agreement; to assign promote or transfer; to determine the amount of overtime worked, to relieve employees from duty due to lack of work or for other legitimate reasons; to decide on the number and location of facilities, stations, etc., *to determine the work to be performed*, amount of supervision necessary, equipment, methods, schedules, together with the selection, procurement, designing, engineering and the control of equipment and materials; and to purchase services of others, contract or otherwise.

⁵ Gallagher testified that the City street sweeper swept Main Street every Monday and Friday. There was no evidence that the street sweeper did not sweep Main Street on the Monday after the clean up. The Union, therefore, has not demonstrated that there was any elimination of any Department of Public Works work resulting from the cleanup.

not provide the Arbitrator with any basis from which to form a proper remedy. Absent the basis for a remedy, the grievance should be denied.

CONCLUSION

For the above-stated reasons, the “Pride of Cortland” clean up on July 21 and 22, 2012 did not violate the collective bargaining agreement between the City and the Union. The activities involved were not even subject to the collective bargaining agreement nor the type of activity normally engaged in by Department of Public Works. In addition, there is no evidence before the Arbitrator upon which to fashion an appropriate remedy. The Union’s grievance must be denied.

Dated: April 22, 2013

HISCOCK & BARCLAY, LLP

By: _____

Alan R. Peterman

Attorneys for the Employer

City of Cortland

Office and Post Office Address

One Park Place

300 South State Street

Syracuse, New York 13202

Telephone: (315) 425-2775

STATE OF NEW YORK

In The Matter of the Arbitration Between

**CITY OF CORTLAND DEPARTMENT OF
PUBLIC WORKS,**

Employer,

and

**CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., CITY OF CORTLAND UNIT PRESIDENT
HOWARD THOMAS,**

Union.

**BRIEF ON BEHALF OF
HOWARD THOMAS**

**D. JEFFREY GOSCH, ESQ.,
Attorney for C.S.E.A. and
Todd MacCaull
Office & P. O. Address
Suite 731
120 East Washington Street
Syracuse, New York 13202
Telephone: (315) 472-4487**

POINT V

**The Appropriate Relief to Make CSEA Represented DPW
Employees Whole 8**

CONCLUSION 9

STIPULATION OF FACTS

The parties entered the following stipulations of fact into the record –

1. **The City of Cortland, New York (“City”) and the Civil Service Employees Association, Inc., Local 1000, AFSCME, A.F.L. – C.I.O., Cortland Local, City of Cortland Unit (“CSEA”) are parties to a collective bargaining agreement (“CBA”) for the period January 1, 2007 – December 31, 2010, Joint exhibit 1.**
2. **The CBA was extended by mutual agreement of the parties, with certain changes, for the period January 1, 2011 – December 31, 2011, Joint exhibit 2.**
3. **A successor collective bargaining agreement has recently been entered into between the City and CSEA through December 31, 2015, but the pertinent provisions which relate to the grievance were not changed.**
4. **The CBA has provisions which require the City and CSEA obey Federal, State & Local Laws and that work that would be overtime for CSEA in a department will not be assigned to another department.**
5. **The City Charter, Joint exhibit 5, provides its Department of Public Works (DPW) is the only department which has any obligations in regards to maintenance of streets.**
6. **Civil Service Job Classifications for Motor Equipment Operator (Heavy), CSEA exhibit 1, and Motor Equipment Operator/Mechanic, CSEA exhibit 2, exist only within DPW and are the only employees whose operation of a street sweeper is an express part of their duties. There are no other civil service job descriptions within the City which provide for operation of a street sweeper as an express part thereof.**

The City agrees “5.” and “6.” are true but believe they are not relevant to the Arbitrator’s deliberations.

7. **City Department of Public Works employees have cleaned City streets on a regular basis and have cleaned up after the annual Dairy Parade, after “First Night,” and, when requested by the City Police Department, have cleaned up after motor vehicle accidents.**
8. **On July 21-22, 2012, a Saturday and a Sunday, there was a clean up of Main Street in anticipation of the arrival of the *New York Jets* for their training camp at State University of New York at Cortland.**
9. **Employees of the City’s Department of Fire and Department of Finance & Administration participated in the clean-up.**
10. **The City did not seek to collectively bargain with, and obtain CSEA’s consent to have employees in other departments perform the work of DPW employees.**

ARTICLE VI

Section 1. Workday, Workweek

- A. The normal workweek shall be 40 hours per week, eight hours per day, Monday through Friday.

...

Section 2. Overtime

- A. Available overtime shall be assigned by department to employees who normally perform such work under the supervisor responsible for assigning overtime. **Overtime will not be assigned outside of the department unless departmental employees are not available or decline available overtime.** (emphasis supplied)
 - B. The method of distributing overtime within each department shall be determined at Labor Management.
- ...
- D. Overtime is any time worked over eight hours per day or 40 hours per week.

...

ARGUMENT

POINT I

The Applicable Language of the Collective Bargaining Agreement is Clear and Unequivocal and Should Be Applied As Collectively Negotiated and Agreed To

It has long been recognized where the language of a collective bargaining agreement is clear and unequivocal, it must be strictly applied as written. As particularly stated by Arbitrator Dana Eischen in Matter of USF Red Star, 108 LA 603, 607 (Eischen 1997) [exhibit tab A hereto], where prior awards by Arbitrators Solomon and LaCugna were quoted:

2. CSEA exhibits 1 & 2;
3. Mr. Gallagher's testimony that the Department of Public Works ("DPW") is the only department to operate street sweepers;
4. Mr. Thomas's testimony that:
 - A. DPW's street cleaning is storefront to storefront, including sidewalks, including, but not limited to, pulling snow from sidewalks into the street for removal;
 - B. The City failed to offer any alternative City department whose work cleaning streets and sidewalks was;
 - C. Firefighters' job classifications do not include street cleaning or street maintenance; and
 - D. The Police Department calls DPW to clean the street after a traffic accident, unless there are environmental concerns.

The City also failed to raise any defense, let alone a meaningful defense that its actions were excused by not having DPW workers available, or if offered, had declined the overtime, or there was some exigent circumstances which militated the work had to be done by others in violation of the Agreement. Where a collective bargaining agreement contains restrictions on who may do bargaining unit work and there are available employees to perform the work, but subcontracts the work out, it has been found to have violated the terms of the collective bargaining agreement. See Matter of Aramark Sports and Entertainment, Inc., 119 LA 143, 149-153 (Dobry 2003) [exhibit tab B hereto].

POINT IV

The City Did Not Inform CSEA of the Clean-Up and Did Not Seek to Bargain an Exception to the Clear Language of the Agreement

It is clear from the following that CSEA was not informed of the street clean-up and employees of other departments would be used:

1. Paragraph numbered "10." of the Stipulations of Fact;
2. Mr. Gallagher's testimony he was not aware of employees of other City Departments doing street clean up, when he saw them working while walking his dog;
3. Mr. Streeter's testimony that he was the CSEA Labor Relations Specialist, who served the City Unit, and there had been no prior notice to CSEA of the clean up, the City's e-mail related to the clean up was not copied to he or Mr. Thomas and, prior to the clean up occurring, the City had not sought to negotiate CSEA being excluded from the work.

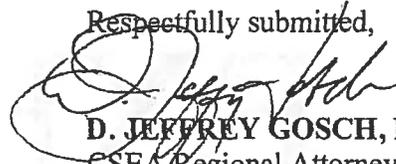
Why would the City not seek to disclose this to CSEA leadership? The only answer is that the City knew its actions would violate the Agreement and sought to conceal such from CSEA.

POINT V

THE APPROPRIATE RELIEF TO MAKE CSEA REPRESENTED DPW EMPLOYEES WHOLE

Where, as here, an employer has deliberately ignored the clear language of a collective bargaining agreement, arbitrators have directed the employer's payment of the overtime lost to employees who would have been paid the overtime but for the actions of the employer. See

Respectfully submitted,



D. JEFFREY GOSCH, ESQ.

CSEA Regional Attorney

Attorney for Grievants

Office & P.O. Address

Suite 731, 120 East Washington Street

Syracuse, New York 13202

Telephone: (315) 472-4487

TO: HISCOCK & BARCLAY, PLLP

Attorneys for City of Cortland

(Alan Peterman, Esq., of counsel)

Office & P.O. Address

One Park Place

Syracuse, New York 13202

Telephone: (315) 425-2775

5) The Shop Steward shall be paid for any time lost in arbitration. Employees acting as witnesses shall be paid for any time lost by the party requesting their services.

ARTICLE 15 ARBITRATION

In the event the parties cannot settle a dispute between them in accordance with the grievance procedure then the same shall be submitted to an Arbitrator who shall be designated by the Syracuse Office, New York State Board of Mediation.

The decision of said Arbitrator shall be final and binding, and shall be compiled with within five (5) working days after the decision is rendered. If the Company does not agree to the above mentioned procedure, the Company and the Union will request either State or Federal mediation and conciliation service for a panel of arbitrators available to hear the case.

The parties shall attempt to select an arbitrator agreeable to both parties. In the event this is not possible the parties shall strike names alternately until the remaining person is the Arbitrator for the dispute, whose decision shall be final and binding upon the parties to this Agreement.

The Arbitrator shall have the power to only interpret the language of this Agreement as to application and intent and shall not add or subtract from the provision contained therein.

The fees and disbursements of the Arbitrator if any, shall be born equally by both parties.

ARTICLE 27 SEVERANCE

In the event JB Truck Services, Inc. closes its shop in Auburn, the parties agree to meet immediately to solely negotiate conditions related to the closing of the shop. In the event JB Truck Services, Inc. opens or reopens a shop, it will give first consideration for job openings in the new or other shop to employees from the Auburn shop that may wish to transfer.

The Company will notify the employees 60 days in advance of the closing of the shop. The severance benefit during the term of this agreement will be as follows:

Length of Seniority	Severance Benefit
2 to 5 years	2 weeks pay
5 year or over	2 weeks pay plus 1 week's pay for each full year of service over five, to a maximum of 13 weeks pay
15 years and over	13 weeks pay

On week's pay shall be computed on the basis of a normal straight time work week, 40 hours, using pay shift rates under the shop agreement applicable to the employees at the time of the cessation of operations.

CLARIFICATION: Any layoff at the Auburn terminal of JB Truck Services Inc. during the life of this agreement will be subject to discussion and agreement between the Union and Management to determine whether or not the severance conditions under this article apply.

In the event of any work stoppage created by strike, lockout or walkout (legal or otherwise), in any area we service, the above provisions in reference to severance will not apply but, will fall under a general layoff condition. If business conditions are such that they warrant a reduction in the work force the general layoff provision will also apply.

ARTICLE 31 TERMINATION OF AGREEMENT

This Agreement signed this 26 Day of July, 1994 shall become effective 7/15/94 and shall remain in effect for a period of three years until 7/15/97 and thereafter shall be automatically renewed for one year periods unless at least sixty days prior to termination of each such period, either party shall service on the other written notice that it desires to make a change herein and specified such change.

Background

J.B. Truck Services, Inc. ("JB" or "Employer") and USF Red Star, Inc. ("Red Star") were sister companies under the corporate umbrella of USF Freightways, Inc. The President of USF Red Star was also the President of J.B. Truck Services, although for each entity he reported separately to the CEO of USF Freightways, Inc. JB was operated and managed as a subsidiary of Red Star, providing basic purchasing and maintenance services and the vast majority of their work reflected that support relationship.

Repair and maintenance employees of the JB shop in Auburn, New York in the classifications of Journeyman Mechanic, Stock Clerk, Parts Room Helper, Tireman, and Body Mechanic have been represented for purposes of collective bargaining for many years by the International Association of Machinists and Aerospace Workers, Lodge 2586 ("IAM" or "Union"). The current and last of several consecutive Collective Bargaining Agreements between these parties covers the term July 15, 1994 July 15, 1997. The provision primarily involved in this case, Article 27, was significantly amended in negotiations which led to the 1989-91 Agreement. Prior to 1989, the contracts provided for one (1) week's severance pay for each week of service, "upon notice that the Auburn Shop in part or whole will be moved away". This was revised in 1989 with the current schedule of severance benefits and the requirement of notice to the employees "60 days in advance of the closing of the shop". According to uncontradicted record testimony, the Parties in 1989 negotiations specifically discussed the "Clarification", which had been part of that Article since at least 1973, and decided not to change it.

upon the closing of the facility but did not. The only employees that received sick day compensation were those that had worked until their termination on September 6, 1996 and they were told by the Company that they had to use them prior to that date or they too would not receive pay for the unused days.

4) Tool Allowance; this too is another area of the contract that leaves no room for interpretation or a misunderstanding. The contract clearly states on page 18 that "beginning 7/15/94, valid receipts will be required to be given to the Shop Manager during the course of the contract year totaling at least the tool allowance amount for that given year." The tool allowance for that given year was \$270.00. The employees had faithfully turned in their receipts for their tool purchase but were not reimbursed in July of 1996 as they were supposed to be.

The above are not conditions related to the closing they are guaranteed benefits of the contract. Conditions related to a closing are when it's going to happen, who will be affected and when. The contract does not state that the Union must sacrifice benefits already negotiated with the Company as the Company wanted them to do. The Union attempted to negotiate with the Company over the conditions and other areas but met with a hard time each step of the way. All the Company wanted out of any negotiations was to provide less than what they already agreed to provide in the contract.

When employees of a company lose their jobs because of a plant closing, they go through one of the most trying times of their lives because of the uncertainties of their futures. The last thing they want to have to do is beg for what they already have coming. Ultimately that's why the former employees of JB Truck backed off of the other thing they were asking for in their original list of proposal—they just wanted to get on with their lives. What this company did to these former dedicated employees is shameful and wrong—wrong morally and contractually. Therefore, the Union requests that you uphold the arbitration in favor of the Union and the Company make whole all employees for their severance pay, vacation pay, sick pay, and tool allowance they rightfully had coming.

Company

The issue being arbitrated today deals with severance as it relates to the Company discontinuing the operation of J.B. Truck Services located in Auburn, New York. The Union will contend that there is contractual language calling for the automatic payment of severance, at a pre-determined schedule, for all employees, in the event of a shop closing. The Company will show that the Collective Bargaining Agreement actually calls for a negotiated process of discussion and agreement in the event of a closure. The Company will also demonstrate that the severance language in the Contract only applies to those actually employed at the time the shop ceases operation. Furthermore, the Company will prove that rather than participate responsibly in an open discussion of all conditions

related to the closedown, the Union, in fact, breached the Contract by refusing to meet that obligation and by failing to negotiate the matter of severance in good faith.

It was clear from the outset that the Company and the Union had contemplated the possibility of a shutdown—after all, there was a severance clause in the Contract. However, equally obvious was that rather than leaving nothing to chance or interpretation, the severance language was purposefully accommodating in nature. More to the point, the language encouraged negotiation concerning the actual closing conditions and turned on a process of discussion and mutual agreement between the Company and the Union. Although there was a formula dealing with the payment of severance, the actual application was to be the subject of responsible discussion and agreement by the parties.

The Union breached the contract when they failed to discuss the lay-off issue with the Company in a responsive and responsible manner. Rather than engage in a constructive dialogue with the Company regarding the cessation of operations by J.B. Truck Services, and possible shop closing benefits, the Union repeatedly stonewalled good-faith attempts by the Company to discuss the whole range of issues and in particular severance. Three monetary proposals dealing with the severance issue were made to the Union without them making any counter-offer or attempting to address the severance issue through a process of constructive negotiation.

It is very obvious that Article 27 language was carefully crafted by the Union and the Company to ensure that in the event of such a momentous event as the closing of the shop that it would be handled in an open manner, freely discussed, with agreement on conditions being the result of negotiation and agreement. The language of Article 27 further states that "Any layoff . . . during the life of this Agreement will be subject to discussion and agreement. . . The Article also lays out how severance pay is calculated, applicable to the employees at the time of the cessation of operations. (Emphasis added). The language is crystal clear—it defines the process to use to determine when severance is applicable while at the same time identifying who will be eligible and the rate of pay to be used.

The Union breached the contract when they failed to meet their obligation to negotiate conditions related to the closing of the shop. Additionally, they further violated the intent and the specific language of Article 27 when they failed engage in a process of discussion and agreement concerning the application of severance.

If the intent of the parties was to make severance at a fixed amount automatic for all employees, the parties would have agreed on that amount; however, that was not the case. If the intent of the parties was to mandate a guaranteed economic settlement in the case of a shop closing that is how the contract would have read. However, to the contrary, shop closing conditions were intended to be a matter for negotiation and nothing in the CBA guarantees that all employees be paid out at a fixed schedule as the Union contends. The very fact that the language was open and invited discussion and agreement by the mutual

Company laid off the Grievants on February 7, 1997. The Grievances must be and are hereby denied.

LAYOFFS DURING LAST DAYS

Issue

EISCHEN, Arbitrator: — The Parties were in general agreement that the primary contract provision involved was Article 27, but they were not able to stipulate a joint framing of the issues for arbitration. After considering their respective positions, I determined that the questions presented for decision in this case are as follows:

What, if any, are the Collective Bargaining Agreement entitlements (Article 8, Section 6; Article 10, Paragraph F; Article 27 and/or Article 28) of the sixteen (16) employees who received "Letters of Layoff" dated July 3, 1996 (9 employees); July 17, 1996 (4 employees); August 15, 1996 (1 employee); and August 29, 1996 (2 employees)?

Pertinent Contract Provisions

ARTICLE 13
GRIEVANCE PROCEDURE

1) For the purpose of this Agreement, the term "Grievance" means any dispute between the Company and the Union or between the Company and any employee concerning the effect, interpretation, application, claim of breach or violation of this Agreement or any other dispute which may arise between parties.

A. Grievance will be in writing within five (5) days of knowledge of the alleged infraction. Union will have fifteen (15) days to submit such grievance to the Company for settlement. Failure to comply with above time limit will deem the infraction untimely.

B. The Company will have ten (10) days from date of receipt of the written grievance from Union to respond. Failure to respond within the stated time limit will validate the grievance.

2) Any such grievance shall be settled in accordance with the following grievance procedure:

A. The dispute or grievance shall be taken up by the Shop Steward, the grievied employee and management.

B. The Shop Steward shall call in a representative of the Union who shall meet with management and the Shop Steward to endeavor to reach a settlement.

C. In the event the grievance or dispute is not settled in a manner that is satisfactory to the grieving party, the Union has the right and authority to submit such grievance or dispute to arbitration in a manner hereinafter provided.

3) Either party to this Agreement shall be permitted to call employee witnesses each and every step of the grievance procedure for the purpose of substantiating the contentions or claims of the parties.

4) The grievance procedure and arbitration provided for herein shall constitute the sole and exclusive method of determination, decision, adjustment or settlement between the parties of any and all grievances as herein defined.

USF RED STAR —

Decision of Arbitrator

In re USF RED STAR (JB TRUCK SERVICES) (Auburn, N.Y.) and IAWMA LOCAL LODGE 2586, DISTRICT 157, NYS Employment Relations Board Case No. SP96-48, May 7, 1997

Arbitrator: Dana Edward Eischen

SEVERANCE PAY

— Layoffs during last days *123.111
*117.103 *123.20

Employer violated collective-bargaining agreement when it denied severance benefits to 14 employees "laid off" between date it gave notice that it intended to close operations and actual closing date, even though it claimed that benefit-calculation table "applicable to the employees at the time of the cessation of operations" meant that only two employees laid off immediately prior to full cessation of operations were entitled to severance benefits, where all 16 laid-off employees were severed because of shop closing.

— Layoffs during last days *123.111
*117.103 *24.37 *123.20

Employer violated collective-bargaining agreement when it denied severance benefits to employees "laid off" between date it gave notice that it intended to close operations and actual closing date, even though agreement states that any layoff will be subject to discussions between union and management to determine whether or not severance conditions apply, and parties failed to reach agreement after protracted negotiations, since that portion of agreement was not intended to vitiate agreement's severance provision and leave those benefits for ad hoc negotiations, and bargaining history shows that parties always intended that such negotiations were to determine whether shop-closing benefits applied to other types of layoffs.

Appearances: For the employer — Don Rucker, director labor. For the union — Frank Carelli, Jr., business representative.

EXHIBIT

B

help" prohibition; employer did not ask union for additional help when employees refused overtime work, and employer has not shown that union was unable to provide additional help, if it had been asked.

[4] Back pay ▶ 117.395

Union members, who were denied work when food service employer violated collective-bargaining agreement by subcontracting work, will be given back pay for that missed work, and union will determine who is to get that back pay, since it does not necessarily follow that employees who filed grievances were affected employees; trying to discern who lost opportunities is problematic at best.

Appearances: For the employer—Richard A. Buntele, labor relations director. For the union—Renate Klass (Martens, Ice, Klass, Legghio, Israel & Gorchow, P.C.), attorney.

AVAILABILITY OF EMPLOYEES

DOBRY, Arbitrator.

Introduction

The parties to this dispute are ARAMARK Sports and Entertainment Inc. a subsidiary of ARAMARK Corporation (hereinafter "ARAMARK" or "Employer") and the Hotel Employees and Restaurant Employees Union, Local 24 (hereinafter the "Union"). ARAMARK Corporation is an international company engaged in providing various services to client companies and organizations. One of the services provided is that of food service. ARAMARK is providing food service to Cobo Hall, located in Detroit, Michigan.

Grievance No. 12210 is dated October 11, 2002. It alleged:

"On Oct. 9, 2002, me [Jackie Thigpen], Brenda and Denise,¹ were not scheduled to work. We had 3 days in a pay period. They said they didn't need us, but instead called in Food Team in a union house and had them do all Oct. 10 morning contract. If there was work to be done, and we did not have 5 days, we were supposed to

¹ Jackie Thigpen, Brenda Monroe (now Brenda Spann), and Denise Harrell (now Denise Garnett).

work that day, they could [not]² have took us off Saturday Oct. 12, 2002. When I spoke to Chuck Schuler he said he did not know about this; 20 minutes later he say they can do this, and I could call the union. Brenda and Denise have not been paid for the last grievance. We pay 30 dollars union dues but cannot get days due to US."

The answer alleged:

"In response to grievance #12210, submitted by Jackie Thigpen, Denise Garnett, and Brenda Spann. Executive Chef Bill Wallace and Executive Sous Chef Rodney Robinson response is as follows:

"On October 9, 2002 the only function scheduled was a part of 25 guests for a buffet, a union cook was scheduled for this function and did work. In addition a cook from food team was scheduled based on the type prep work needed for the contracts. Work was assigned for these employees and by contract they are on an eight (8) hour minimum shift. As outlined in Article 12, Section 1, we have a right to direct the work force to do tasks and expect employees to be productive for the hours being paid. Our event driven business dictates when work is available and on Thursday the 10th of October all available seniority pantry employees worked. As the grievance outlined the employees did work the pay period in question, as it was available.

"As outlined in Section 7(b) of the contract there are no specified weekly hours or set schedules for the steady extra employees who have filed this grievance and there is -0- compensation owed."

Grievance No. 2981 is dated October 14, 2002 and alleged:

"On Oct. 12., Food Team were brought in to do Pantry Dessert for 2000 people for Tuesday. So they took me, Brenda and Denise off for Monday and took Brenda and Denise off for Tuesday. They put food team on for Tuesday. Not only are they getting our days but also our overtime, if it is available. October 12 they only had a reception and 300 plate up. 2 cooks and 2 pantry or utility guy should normally do this. Has got to stop. I refuse to pay union dues, and cannot get my days or hours, just because Chef Bill Wallace, and Chef Rodney Robins are allowed to do this and get away with it."

The employer's Answer, dated October 24, alleged:

"In response to grievance #2981 submitted by Jackie Thigpen, Denise Garnett, and Brenda Spann, Executive Chef Bill Wallace and Execu-

² The copy given to the arbitrator is cut off at this point. The "not" was inferred from context.

Section 6(c) In the event the job referral system fails to supply qualified workers, when large numbers of workers are needed, to ARAMARK within forty-eight (48) hours after such request was made, ARAMARK may engage such new workers from any other source.

(d) ARAMARK agrees to hire all extra employees in the manner above first using the job referral system operated by the Union then, if the Union is unable to supply the sufficient number of workers, ARAMARK may go to any other source.

ARTICLE 2
WORK WEEK—HOURS OF WORK—
DEFINITION OF 6th AND 7th DAYS
REPORTING FOR WORK—DEFINITION OF
STEADY EMPLOYEES, STEADY EXTRA AND
EXTRA EMPLOYEES

* * *

Section 7 (b) A steady-extra employee is defined as an employee who is on a list maintained by ARAMARK and whose first obligation is to work for ARAMARK in its operation in the Civic Center buildings of Detroit. There shall be no specified weekly hours or set schedules for steady-extra employees. ARAMARK shall endeavor to notify steady-extra employees of their work schedule for the week by Thursday of the preceding week.

* * *

ARTICLE 12
RIGHTS OF ARAMARK—
RIGHTS OF EMPLOYEES

Section 1 ARAMARK shall have the right to control and direct its employees. This right shall include, among others things, the right to hire, promote, lay-off, transfer, discipline, discharge, refuse to hire, set work schedules, make work assignments and direct and control its operations, provided the decision of ARAMARK is in conformity with the provisions of this Agreement. ARAMARK reserves the right to drug/alcohol test job applicants or for cause (e.g. those employees showing signs of intoxication or smell of alcohol). There shall be no random drug/alcohol testing allowed.

* * *

ARTICLE 15
GRIEVANCE PROCEDURE

* * *

Section 2 Arbitration Procedure.

(b) The expenses of the arbitrator shall be borne equally by the Union and ARAMARK; each party bearing the expense of its own representative, witnesses and other preparation and presentation expenses.

Section 3 Final and Binding

Any decision reached at any stage of these grievance proceedings or by the arbitration procedure shall be final and binding upon the parties as to the matter in dispute. ARAMARK, the Union and the aggrieved employee shall thereafter comply in all respects with the result of such decision reached.

Section 4 Arbitrator Limited to Terms of Agreement

The arbitrator shall not have any right or authority to add to, to modify or subtract from any of the terms, conditions or sections of this Agreement.

* * *

*Letter of Understanding*³

This letter of understanding, entered into effective December 2, 2001, is between ARAMARK and Hotel Employees and Restaurant Employees Union, Local 24.

1. The parties agree that the following shall be considered departments as of this date, as that term is used in the collective bargaining agreement between the parties dated December 1, 2001:

Concession Department
Kitchen Department
Banquet Department

2. It is agreed between the parties that the following shall be considered the steady-extra list, and the number designated after each classification by ARAMARK and the Union:

* * *

Pantry—5

SCHEDULE "A"

* * *

³ Dated December 2, 2001.

The employer produced *no* contradictory evidence, testimonial or otherwise, if it exists about supporting the alleged contract loss (concerning Grievance No. 2991), or denying the prior posting (concerning Grievance No. 12210). If Ms. Spann got it wrong, one presumes the person in charge of posting these documents (or keeping track of corporate contracts and cancellations) would have said so. Indeed, the employer did not deny the changes, but implicitly admitted them when it opined that changes of schedule were permissible if there had been a loss of a contract. The expected witness, who was under the control of the employer, was absent. One can create an adverse inference.⁵ The silence is as telling as the tale itself.

The services contract confirms that ARAMARK had contracted to prepare and serve over 400 continental breakfasts on the morning of October 10. Ms. Spann testified she and her co-workers would have done all the preparation for those breakfasts:

Q. Now, for October 10, the Employer's contracts show a series of deluxe continental breakfasts; for example, an assortment of breakfast pastries, including bagels, muffins, Danish's, croissants, cream cheese. Would you have done any of that work normally?

A. Yes.

Q. What would you have done?

A. We would have done the whole contract. We would have done the assorted breakfast, the pastries, the bagels, the muffins, the Danish's, croissants, the cream cheese, and the jelly and the butter. And we would have done the seasonal fruit platters, too.

When the Grievants arrived for work on October 10, 2002 at 5 a.m., they saw hundreds of continental breakfasts which were prepared and ready to serve. None of them had prepared or been given the opportunity to prepare any of that food. When they complained, Rodney Robinson ignored them.

The Union alleges that the pantry workers could have and should have been brought in to prepare for an event scheduled for October 10, 2003. Ms. Spann testified that when she arrived at work on October 10th she saw

⁵ See Howard R. Sacks & Lewis S. Kurlatzick, *Missing Witnesses, Missing Testimony and Missing Theories*, (Butterworth, 1987) p. 22; Cf., Edward Levin and Donald Grody, *Witnesses in Arbitration*, (BNA, 1987), pp. 125-126.

"hundreds of breakfasts" already prepared and ready to go. The 400 breakfasts had been prepared by someone else. The documents produced by the Employer indicate that Food Team employees did it. Ms. Spann stated it would have taken eight hours and three people.⁶

It is undisputed that this work was not done by pantry employees. Ms. Spann testified without contradiction that although she and her co-workers had been scheduled to work on October 9, 2002 to prepare these breakfasts the day before they were to be served, the Grievants were inexplicably removed from the schedule. Although they were available and willing to work, they were not permitted to do so.

It is also undisputed that when they arrived for work at 5:00 a.m. on October 10, 2002, 400 deluxe continental breakfasts had already been prepared. Subcontractor Food Team employees worked a total of 18½ hours⁷ on October 9, 2002. Preparing continental breakfasts would normally be done by persons in Grievants' classification.

The Employer has not denied that Food Team personnel prepared the cold food October 10, 2002 breakfasts. Its October 24, 2002 answer to the grievance, like its testimony at the hearing, emphasized the hot food preparation for an October 9, 2002 buffet. Significantly, however, that grievance answer also conceded that Food Team worked on other contracts on October, 2002: "In addition, a cook from Food Team was scheduled based on the type of prep work needed for the contracts."

Nor did the Employer deny the use of Food Team at the hearing. In his testimony, the only Employer witness, Mike Zielinski, did not deny that Food Team employees had prepared the breakfasts for October 10, 2002. Rather, the sole subject of his testimony pertained to the breakfasts served on October 9, 2002 (not the subject of this case), which was essentially irrelevant.

⁶ This large amount of continental breakfasts did not magically appear. One can safely presume that the elves did not do it.

⁷ Lula Smith worked 9½ hours, Van Prince worked 6 hours and Rodney J. Berry worked 3 hours.

needed to be interpreted. I examined the language that is there, and considered the absence of language that isn't. While words are primary, voids and interstices merit consideration, too. The cross-links are entitled to respect. The arbitrator noted the past practice as relevant and established as an authentic mutual construction of the CBA's meaning.

In totality, the CBA creates an ongoing obligation. It requires the Employer always endeavor to have bargaining unit members do the work, and, if their numbers are insufficient, by employees referred by the Union:

1. ARAMARK agrees that the Union's job referral system "will be the exclusive source of hiring employees, and agrees to employ only such persons who have been referred to it by the Union." Art 1(5);

2. "In the event the job referral system fails to supply qualified workers, when large numbers of workers are needed, to ARAMARK within forty-eight (48) hours after such request was made, ARAMARK may engage such new workers from any other source." Art 1(6)(c); and

3. "ARAMARK agrees to hire all extra employees in the manner above first using the job-referral system operated by the Union, then, if the Union is unable to supply the sufficient number of workers, ARAMARK may go to any other source." Art 1(6)(d).

The contract expressly prohibits use of non-Union help in the Kitchen Department unless the Employer can demonstrate an inability to get personnel from the Union hall: "No non-union help will be used unless the Union hall cannot supply help." Schedule A.

Further, the CBA contains explicit recognition, seniority and wage clauses that protect Grievants. Article 1(1) recognizes the Union as the sole and exclusive bargaining agent for these employees. Article 2(7)(b), the December 2, 2001 Letter of Understanding and Schedule A in the collective bargaining agreement recognize that steady extra pantry employees have seniority rights. Additionally, the contract spells out the wage rates for steady extra pantry employees. Therefore, this collective bargaining agreement must be interpreted to protect the rights of the pantry employees to do bargaining unit work. As discussed below, this fundamental right is further buttressed by explicit language in the contract that limits the Employer's right to use "non-union help."

"Non-union" help, namely Food Team employees, did pantry work in connection with both the October 10, 2002 Society of Women Engineers breakfasts and the October 15, 2002 Economic Club lunches. While Employee witness Mike Zielinski testified that he typically uses the Union referral hall for chefs, he did not claim that ARAMARK attempted to obtain any union hall pantry help for either the October 10, 2002 breakfasts or the October 15, 2002 lunches.

[1] It is well recognized that collective bargaining agreements with recognition, seniority and wage clauses will be interpreted to include a covenant of good faith and fair dealing with respect to the integrity of bargaining unit work. Archibald Cox, "The Legal Nature of Collective Bargaining Agreements."⁹

The Union cited to Arbitrator Whalen. He commented in *New Britain Machine Co.*, 8 LA 720, 722, 1947:

Job security is an inherent element of the labor contract, a part of its very being. If wages is at the heart of the labor agreement, job security may be considered its soul. The transfer of work customarily performed by employee in the bargaining unit to others outside the unit must, therefore, be regarded as an attack on the job security of the employees who the agreement covers and, therefore, on one of the contract's basic purposes.

For these reasons, arbitrators refuse to permit routine subcontracting of bargaining unit work.¹⁰

This arbitrator agrees with that principle. Moreover, it is inherent in the parties' bargain and the language they used.

[2] While the Employer has the right to schedule its work, it does not contractually have the right to have "non-union help" do that work unless the pantry classification employees are unavailable and the union hall is unable to supply help after being asked to do so. Here the Employer made no showing that the pantry employees were unavailable, that it asked the Union for help or that the Union was unable to supply help.

The Employer violated the contract with respect to the October 10, 2002 breakfasts for the Society of Women Engineers. Pantry

⁹ 57 Mich. L. Rev. 31 (1958)

¹⁰ See *Reynolds Metals Co.*, 42 LA 333, 334 (Coffey 1963); *Ormet Corp.*, 86 LA 705 (Baroni 1986); *Uniroyal Inc.*, 76 LA 1049 (Nolan 1981); *Suland Tool & Mfg., Inc.*, 71 LA 120 (Lipson 1978).

ployer's only witness made no mention of a cancelled event. None of the Employer's exhibits showed any alleged cancellation. The Employer has not established this defense.

To be sure, management has broad control of its enterprise. These rights are inherent and also expressed in the contract. It may schedule work and provide services as it decides.

Further, as Steady Extras these employees are not guaranteed a specific number of hours per week.

However, even the management right is qualified, not absolute. It may make decisions "provided the decision of Aramark is in conformity with the provisions of this agreement." Art. 12. Management's general right to schedule work does not defuse its specific obligations to use bargaining unit labor to do bargaining unit work.

Here management improperly contracted out bargaining unit work.

[4] The arbitrator believes that the appropriate bargaining unit members should receive payment commensurate with the work which was actually performed by non-Union help on October 9. As to October 14, they are entitled to a full day's pay.

AWARD

For all the foregoing reasons, the issues are each answered, "Yes."

The Grievances and relief requested in them are *GRANTED*. The Union is entitled to complete relief for the work which it improperly lost. Therefore, the affected employees¹¹ shall be made whole as that term is commonly understood. As to October 10, the remedy should be commensurate with the work that was improperly transferred, and is not necessarily limited to a single day's pay. The matter is remanded to the parties for consultation and agreement on the precise monetary award required. As stipulated by the parties, I retain jurisdiction in the event of a dispute as to rem-

¹¹ It does not necessarily follow that the three employees who filed the grievances were the affected employees. Trying to discern who lost opportunities which were not offered is problematical at best. This is something that the Union should decide. See Marvin Hill and Anthony Sinicropi, *Remedies in Arbitration* (2nd Ed). (BNA, 1981), pp. 329-369.

edy or as to the implementation or meaning of this award.

Regional Transportation District

Decision of Arbitrator

In re REGIONAL TRANSPORTATION DISTRICT [Denver, Colo.] and AMALGAMATED TRANSIT UNION, LOCAL 1001

November 20, 2003

Arbitrator: Earl J. Wyman

EMPLOYEE BENEFITS

[1] Medical visits ▶ 100.5915 ▶ 24.361

Agency did not violate collective-bargaining contract when it declined to pay costs of visit to medical clinic by employee who left work after reporting pain from old injury, despite contention that agency had past practice of paying for these costs, where agency had developed past practice of paying for "first visits" provided they immediately follow proven first time (new) accident or injury that occurred in course of employment, not recurrence of old injury.

[2] Workers' Compensation Act ▶ 100.0764 ▶ 100.30 ▶ 116.44

Arbitrator does not have authority to determine whether agency violated Colorado Workers' Compensation Act when it declined to reimburse him for costs of visit to medical clinic for treatment of old injury, where collective-bargaining contract had no references to act.

Appearances: For the employer—Rolf G. Asphaug, deputy general counsel. For the union—William B. Jones, general counsel.

MEDICAL VISITS

WYMAN, Arbitrator.

The Issues

1. Did RTD violate Article I, Section 5 of the collective bargaining agreement by sending the

AWARD

The grievance is denied and dismissed. Grievant was not entitled to a Leave of Absence and retention of his continuation service after March 1, 2003 because he did not make timely claim to reinstatement after the contractual requirement for a Union Leave of Absence was no longer satisfied. Furthermore, he abandoned his position by seeking employment elsewhere. The Labor Agreement did not require the Company to reinstate Grievant under these circumstances.

ing events or circumstances that would alter practice of using employees to do that work.

[3] Closed mine — Overtime ▶ 117.385
▶ 117.395

Employee who was improperly denied cleanup work after mine closed and work was subcontracted is given remedy of overtime pay for lost work, where he normally did cleanup work on overtime.

Pine Ridge Coal**Decision of Arbitrator**

In re PINE RIDGE COAL/PEABODY COAL, PRENTER, WEST VIRGINIA and UNITED MINE WORKERS OF AMERICA, DISTRICT 17, LOCAL 6426

Coal Arbitration Service Case No.
02-17-04-12

November 11, 2004

Arbitrator: Langdon D. Bell

SUBCONTRACTING

[1] Closed mine ▶ 117.385 ▶ 94.553

Work customarily performed by bargaining-unit employees while coal mine is operating does not continue indefinitely to be work within their jurisdiction following mine's closure, if work is needed to be done to comply with environmental laws, since following mine closing with layoff of all employees, management's explicit and inherent right to subcontract work must be accorded due recognition in light of changed circumstances.

[2] Closed mine ▶ 117.385

Mining company violated collective-bargaining contract when it subcontracted environmental cleanup work on closed mine, where bargaining-unit employees had "exclusive" jurisdiction over this kind of work when mine was open, grievant had regularly performed this work, and there were no interven-

Appearances: For the employer—Charlie Flanagan Jr., manager, labor relations. For the union—Emory Carter, field representative.

CLOSED MINE

BELL, Arbitrator.

Issue

Did the employer violate its collective bargaining agreement with the union when it contracted the subject work of excavating and cleaning surface mining ditches out to an outside contractor? If so, what is the proper remedy?

Positions of the Parties

It is the position of the local union that the company's contracting out the cleaning of a sediment ditch at the Williams' Mountain Strip (a closed surface mine) was work of a type belonging to the outside seniority unit of Pine Ridge Local Union 6426; that the grievant be paid his overtime rate of pay (1½ X) for all hours worked by the contractor; and that the company be ordered to cease and desist from such practice.

It is the position of the company/employer that upon the permanent closure of a mine, the local union servicing such mine loses jurisdiction and its attendant right to this work on such property.

Relevant Contract Provisions¹*Article I—ENABLING CLAUSE*

THIS AGREEMENT, made this 1st day of January, 2002 between the coal operators and associations signatory hereto, as parties of the first party (each coal operator which is a signatory hereto being called "Employer") and the International Union, United Mine Workers of America

¹ Those provisions emphasized by the parties are highlighted in *italic*.

sion hazards, and the ability of supervisors, due to thickness of the seam, to make the essential number of visits to the working faces as required by law and safety regulations.

Section (c) Supervisors Shall Not Perform Classified Work

Supervisory employees shall perform no classified work covered by this Agreement except in emergencies and except if such work is necessary, for the purpose of training or instructing classified Employees. When a dispute arises under this section, it shall be adjudicated through the grievance machinery and in such proceedings the following rule will apply: the burden is on the Employer to prove that classified work has not been performed by supervisory personnel.

Section (d) Management of the Mines

The management of the mine, the direction of the working force and the right to hire and discharge are vested exclusively in the Employer.

Section (e) Union's Rights

Authorized representatives of the Union shall be permitted reasonable access to the mine property to insure compliance with this Agreement. The Employer shall provide candidates for Union office reasonable opportunity to campaign among his Employees during their nonworking (sic) hours and in nonworking (sic) areas, provided there is no interference with production. The Employer further agrees to provide, to the extent practicable, space on mine property for the holding of Union elections and the ratification of collective bargaining agreements.

Section (f) Application of This Contract to the Employer's Coal Lands

As part of the consideration of this Agreement, the Employers agree that this Agreement covers the operation of all the coal lands, coal producing and coal preparation facilities owned or held under lease by them, or by any subsidiary or affiliate at the date of this Agreement, or acquired during its term which may hereafter (during the term of the Agreement) be put into production or use. This section will immediately apply to any new operations upon the Union's recognition, certification, or otherwise properly obtaining bargaining rights. Notwithstanding the foregoing, the terms of this Agreement shall be applied without evidence of Union representation of the Employees involved to any relocation of an operation already covered by the terms of this Agreement.

Section (g) Contracting and Subcontracting

(1) Transportation of Coal—The transportation of coal as defined in paragraph (a) may be contracted out under the Agreement only where contracting out such work is consistent with the prior practice and custom of the Employer at the mine;

provided that such work shall not be contracted out at any time when any Employees at the mine who customarily perform such work are laid off.

(2) Where contracting out is permitted under this section, prior custom and practice shall not be construed to limit in any way the Employer's choice of contractors.

Section (h) Leasing, Subleasing and Licensing Out of Coal Lands

(1) The Employers agree that they will not lease, sublease or license out any coal lands, coal producing or coal preparation facilities where the purpose thereof is to avoid the application of this Agreement or any section paragraph or clause thereof.

Licensing out of coal mining operations on coal lands owned or held under lease or sublease by any signatory operator hereto shall not be permitted unless the licensing out does not cause or result in the layoff of Employees of the Employer.

(2)-(7) These sections have been incorporated into the JOBS Program, Article II, Section (B).

Section (i) Construction Work

All construction of mine or mine related facilities including the erection of mine tipples and sinking of mine shafts or slopes customarily performed by classified Employees of the Employer normally performing construction work in or about the mine in accordance with prior practice and custom, shall not be contracted out at any time unless all such Employees with necessary skills to perform the work are working no less than 5 days per week, or its equivalent for Employees working on alternative schedules.

Provided further that where contracting out of such construction work customarily performed by classified Employees at the mine is permitted under this Agreement, such contracting shall be in accordance with prior practice and custom. Where contracting out is permitted under this section, prior practice and custom shall not be construed to limit the Employer's choice of contractors.

* * *

Article XXIII—SETTLEMENT OF DISPUTES

* * *

Section (k) Prior Agreement

Any dispute and/or difference which as of the Effective Date of this Agreement is in the process of adjustment under the Settlement of Disputes section of the prior Agreement or any dispute and/or difference presented on or after the Effective Date of this Agreement which is based on the occurrence or nonoccurrence of an event which

he has not per-
line in the rela-
ce its closure in

of this case com-
e that the union
clear and con-
ed that the em-
e subject ditch
o the grievant
of Article 1A of
ollowing conclu-

are clearly sedi-
ted, maintained
t of active coal
Mine; and, they
: "maintenance
ure of this strip
, environmental

ind in a number
"jurisdictional
fied employee
luring a mine's
ure of the mine
l work (e.g.,
er used to haul

ne was operat-
ers of this local
er the precise
stomarily per-
ntractors were
perform this

of this mine.
rs of this local
cavation and
nance and re-
parate senior-
mine list and
individual em-
n one list to

e of two se-
ed employees
sputed work
oes not—in
ination of the
gaining unit
nity list to per-
mine. This
ere—the very

work and the subject of its performance arises directly from the mining operation and it is mandated to be continued following permanent closure of such mine;

6. Here, the grievant, as a member of the second seniority list of classified employee members of this local, regularly performed this very work when the subject surface mine was operating and he has performed such work on other surface and deep mines following their closure by this employer. Under such circumstances, the employer's elimination of the first seniority list (brought about by the mine's closure) does not eradicate the grievant's jurisdictional right to identical work that directly arises from the mine's operation and continues following its closure. Such work involves the operation of heavy equipment similar to that used in reclamation.

7. Here the employer proffered no intervening events or circumstances that would alter the customary practice of utilizing classified employees to perform such work—save the closure of the mine—which itself had no impact upon the required continuation of this work. Nor did the employer offer any mitigating/aggravating factors warranting use of an outside contractor (e.g., a de-minimus amount of work etc.). To the contrary, the employer's use of an outside contractor—well intended as it may have been, based upon principle—was more costly than utilizing a classified employee who was ready, willing, and able to perform such work after being initially informed by management he was to perform such work.

8. Under such limited circumstances, the Arbitrator concludes that the employer's contracting out the subject work constituted a violation of the grievant's right to perform such jurisdictional work, in violation of Article 1A(a) of the NBCWA.

—The Remedy—

[3] The grievant has established—and management does not contest—that at the time this work was performed he was working full time and any such work he would have performed would have been on overtime. He also testified he has, in the past, been assigned such work on overtime. As a result, the grievant is entitled as a remedy to be paid his overtime rate of pay for the number of hours worked by the outside contractor on these

ditches. Jurisdiction is retained to resolve any issues relating to implementation of this remedy, if not agreed upon by the parties. The Arbitrator declines the union's request that a cease and desist order be issued because of the peculiarly unique facts and circumstances of this case, limiting his findings and Award thereto. It is, however, hoped that the principles and rationale of this decision will provide guidance to these parties in their ongoing labor/management relations.

AWARD

Based upon the foregoing findings of fact, discussion and analysis of the arguments and case citations submitted, and the specified conclusions and remedy set forth above, the instant grievance is sustained and the foregoing remedy is order implemented, with conditional jurisdiction retained by the Arbitrator.

School District of Royal Oak

Decision of Arbitrator

In re SCHOOL DISTRICT OF THE CITY OF ROYAL OAK [Mich.] and ROYAL OAK EDUCATION ASSOCIATION

AAA Case No. 54-390-01646-03

October 12, 2004

Arbitrator: Deborah M. Brodsky

GRIEVANCES

[1] Timeliness ▶ 100.0733 ▶ 100.0760

Grievance challenging wages teacher was paid is arbitrable, despite contention that it was untimely filed, since grievance involves matter of continuing nature, teacher was not apprised that she had potential grievance for four years, and school district did not assert untimeliness defense until arbitration.

[2] Timeliness ▶ 100.0752 ▶ 100.0760

School district did not waive objection to timeliness of union's statement regarding its intent to arbitrate by its failure to raise issue before arbitration hearing, since intent to arbitrate is last step prior to arbitration, and it is

the Board has upheld material breach of a hereby an employee is in the use of alcohol S-38,287 (1999). For the Memorandum of grievant is not significant. Last Chance VOA here expressly alcohol or illegal November 19, 1998 a agreement. A certified ne specimen obtained 2000 tested positive 4 ng/ml with the cut GC/MS technology. ence to the chain of spects of the test.

ts to explain away or rug test are not perne notion of passive to marijuana being witz testified that the detected by the urith this explanation. arch evidence was

in the negative hair itive urinalysis at an equally unconvinceny from Dr. Tokow remains in the systly about three days one by the May 23 test is assumed to be z's uncontested tes does not reach the pefore it would not int's hair sample on ight before. that Grievant's teruse and the griev

Decision of Arbitrator

In re USS, A DIVISION OF USX CORPORATION and UNITED STEELWORKERS OF AMERICA LOCAL 1014

Case No. USS-38,484

June 8, 2001

Arbitrator: Recommended findings and award by David A. Petersen, arbitrator, approved by Board of Arbitration, Shyam Das, chairman

SUBCONTRACTING

[1] Remedy ▶ 117.395

Remedy for employer's violation of collective-bargaining agreement in subcontracting mud hauling is that truck drivers are entitled to be made whole for lost earnings, where they had historically been assigned to perform this work.

[2] Remedy ▶ 117.395

Truck drivers who normally would have done mud hauling that was improperly subcontracted are entitled to be made whole for lost earnings, even though union failed to identify affected employees, where agreement obligates "appropriate Union and Company representatives" to identify payees and amount owed them; given this mutual obligation and employer's position that there was no identifiable employees for remedy purposes, union is not required to unilaterally identify payees.

REMEDY

PETERSEN, Arbitrator.

Subject

Compliance with Award dated August 4, 2000.

Statement of the Original Grievance

"The Company is in violation of Section 2-C-E of the February 1, 1994 Basic Labor

Agreement when they contract out our work and fail to notify the Union. On a consistent basis they had contractor Heritage hauling mud from 1 BOP Gas Cleaner.

"Remedy Requested: The Union request that the Company cease and desist violation of 2-C-E by failing to notify, and that the bargaining unit be made whole for all losses."

Contract Provision Involved

Section 7 of the Basic Labor Agreement.

Statement of the Award

The case is resolved as set forth in the Findings.

Background

In the original grievance it was claimed that Management at Gary Works improperly utilized contractor forces rather than bargaining unit employees to haul mud from the #1 BOP Gas Cleaner to the dump, and that Management improperly failed to issue a Contracting Out Notice for this work. Violations of Section 2-C of the Basic Labor Agreement were alleged and the case was submitted to the Expedited Procedure under Section 2-C-G. For reasons set forth in its August 4, 2000 Award, the Board found that the Company had contracted out this mud hauling work in violation of Section 2-C-A. The Board sustained the grievance and directed the Company to make affected employees whole to the extent consistent with Section 7-A-7 of the Agreement. The Union has now re-appealed the case, on compliance, protesting that the Company has continued to contract out this mud hauling work and has taken the position that no back pay is due to any bargaining unit employee.

The Union contends that the Company failed to comply with the Board's original Award dated August 4, 2000. The Union seeks a Supplemental Award directing the Company to cease and desist contracting out this mud hauling work and directing the Company to make capable and affected bargaining unit employees whole consistent with the back pay principles set forth in USS-23, 431 et. al. The Union insists mud hauling was formerly bargaining unit work, and that plant employees are entitled to a monetary remedy for the lost work and overtime opportunities which resulted from this improper contracting out.

According to the Union evidence, representatives of the parties discussed the August 2000 Award on August 29, 2000 and the Vice President of the Local Union wrote to the Department Manager of Labor Relations on September 12 and September 27, 2000 requesting implementation of the August 4, 2000 Award. The Sub-District Director also reportedly phoned the Manager of Employee Relations shortly after September 27, 2000 to confirm that Management was moving forward with implementation of the Award and that no action would not be required to enforce it. The Department Manager then responded to the Vice President by letter dated October 2000, which reads in part:

This is in response to your letter dated September 27, 2000 regarding the above captioned project. [USS-38, 484] Please be advised the Company is investigating the purchase of equipment and considering various options for performance of the work at issue. The Union will be informed as more details become available. Your patience while we pursue this matter is appreciated.

With respect to any "back pay" the Union believes is due pursuant to USS 38, 383 [sic] the Company position that there are no identifiable and/or affected employees for remedy purposes.

The Sub-District Director stated that he telephoned the Manager of Employee Relations again in January 2001 and was informed that the Company had bids out to purchase equipment needed to perform this mud hauling work. The witness said he asked the Manager for copies of those bids but never received them.

On cross-examination, the Sub-District Director acknowledged that during a meeting at the plant in the August to September time frame he heard the Department Manager of Labor Relations ask the Vice President of the Local Union if the Union would be willing to make an agreement allowing the Company to continue contracting out this mud hauling work. The witness recalled the Vice President answering "absolutely not." The witness did not know whether the Union ever identified to the Company the affected employees for purposes of the Award in USS 38, 484. He believed that all the Truck Drivers were affected employees, as the Award would have been performed in that seniority unit. He calculated that it would take

Truck Drivers to accomplish this work on a turn basis.

The Vice President of the Local Union testified that this mud hauling work continues to be contracted out at the plant. The Vice President also noted that employees in Material Handling and Equipment Services Transportation - East averaged about 4 to 5 hours of overtime per week in 1998 and 1999, and that Truck Drivers in Transportation East averaged approximately 8 hours of overtime per week in April 2000 through March 3, 2001. The Vice President stressed that although the Company has on more than one occasion indicated in his presence whether the Union would be willing to make a deal to negate the

Department Manager in USS-38, 484, or would trade the right to contract out this work for incentives (electrical distribution, he has consistently answered that he is not interested in any such

The Area Manager of Material Handling testified that the plant lacked the necessary

equipment to perform this mud hauling work both before and after the August 4, 2000 Award. The plant lacks so-called Dyno-type trucks with roll-off boxes which the contractor uses to haul this mud. The Area Manager

said that the plant was understaffed with respect to equipment operators or truck drivers before the Award issued, and that the plant was still understaffed. He said the plant had hired in 1998, 1999 and 2000, but did not meet its hiring needs in any of those years. Those new employees were assigned to existing jobs to replace personnel who left. According to the Area Manager this mud hauling

work requires a dedicated crew in order to adequately support BOP Shop production

around-the-clock, and this crew must be maintained for safety and operations. He calculated that it would require approximately five

employees (i.e., four plus one for vacation and sickness fill-ins) to perform this mud hauling work on a 21-turn basis. The witness represented

that he did not have five employees to dedicate to mud hauling, and he believed that assigning this work to the bargaining unit would

necessitate hiring new employees. He further noted that, in Transportation East, total overtime hours offered to employees increased

from 1998 to 1999 (from 16.00% to 19.80%) and from 1999 to 2000 (from 19.80% to

20.60%).

The Department Manager of Labor Relations stated that the parties attempted to negotiate over the August 4, 2000 Award. The Manager confirmed that the Vice President of the Local Union rejected any deal which would permit the plant to continue to contract out this mud hauling work. The Manager recalled, though, that in September 2000 some informal talks began with the President of the Local Union regarding incentive opportunity for certain employees. The issue of mud hauling was brought up as a possible trade-off for incentives. The witness said the Company presented a written "loose proposal" to the Union in October 2000 which would allow the plant to contract out mud hauling. And, as recently as March 2001, the President of the Local Union reportedly indicated to the Manager that the Union was waiting on the Company's "formal proposal." The witness explained that the Company has not yet purchased the equipment which would be necessary to assign mud hauling work to the bargaining unit because it made no sense to purchase this equipment while negotiations were on-going to reach a different resolution.

Findings

Grievance WGa-98K-0577 (USS-38,484) claimed, on the merits, that mud hauling work which bargaining unit employees were capable of performing and had previously performed in the plant was improperly contracted out. And, in the remedy requested portion of the grievance, it was requested that "the bargaining unit be made whole for all losses." In its August 4, 2000 Award the Board concluded that the Company had in fact contracted out this mud hauling work in violation of Section 2-C-A, and it sustained the grievance and directed the Company to make affected employees whole to the extent consistent with Section 7-A-7. As of the date of the compliance hearing, in March 2001, the Company had not ceased contracting out this mud hauling work and was taking the position that no monetary remedy was due any current or former employee.

Section 7-A-7 of the Agreement provides, in part, as follows:

Awards of the Board may or may not be retroactive as the equities of particular cases may demand, but the following limitations shall be observed in any case where the Board's award is retroactive:

EXHIBIT

E

employees for three days company foreman and employees, and 12 unscheduled maintenance completed job on time.

Efficiency - 117.380

Employer, in using subcontractor, made sound decision does not per se excuse collective-bargaining use of contractors.

For the employer — C. human resources e, director of Indus- Young, plant engi- Gary Youngmans, supervisor. For the D. Ashley, interna- tive; Thomas R. Still- dy Anspach, vice- Miller, secretary; award; Randy Gar- david Hood, commit-

RESTRICTIONS

Contractor — The Arbitrator — The Arbitrator he issue as follows: r justified under the the grievance, and if he remedy?

Collective Bargain- d by the parties as ncluded;

on ment nce Procedure ide Contracting

Decision

a supplier of steer- components to the y.

s, the plant uses a move dirt and oil el parts. The parts parts washer on a operation has been y 1980s. The parts al plant and some ompany plants.

July 1, 1994, John Williamson, set out

OUTSIDE CONTRACTING

OUTSIDE CONTRACTORS WILL BE IN OUR PLANT THE 6TH, 7TH & 8TH OF JULY. THESE CONTRACTORS WILL BE REPAIRING THE INSERT WASHER (REBUILD). ALSO CONTRACTORS WILL BE INSTALLING A NEW AIR COND. UNIT FOR ENGINEERING [sic]. STARTING SOMETIME THE WEEK OF JULY 11TH AN ADDITION WILL BE ADDED TO THE FIRST FLOOR OF THE LAB. THIS WILL INCLUDE [sic] ALL UTILITIES.

On July 22, 1994, the grievance in question was filed. It stated:

Department: Maint
On July 6,7,8,9 outside contractors were in the plant repairing the inside of washer. That week the plant was shut down. Exhibit Section E & all other articles that pertain to this grievance state pay all monies owed to maint. personnel that didn't work & reframe from using outside contractors perform maint. duties.

C. Von Williamson issued the following statement:

THE COMPANY MAINTAINS THAT THE FABRICATION AND INSTALLATION OF THE SLIDER BED AND THE ASSOCIATED SHEET METAL WORK IS WORK THAT IS NOT NORMALLY DONE BY OUR MAINTENANCE CREW. THIS IS NOT TO SAY THAT OUR CREW COULD NOT HAVE DONE THE WORK GIVEN THE TIME AND DESIGN SPECIFICATIONS. THE PLANT WAS SHUT DOWN DURING THIS REPAIR AND THE WORK HAD TO BE COMPLETED ON A TIMELY BASIS SO AS NOT TO IMPAIR PRODUCTION.

The plant was on shutdown for the week commencing Monday, July 4, 1994.

The outside contractor used 6 of its employees and was assisted by one Company foreman and two maintenance employees.

The Employer agreed that maintenance is utilized for minor repairs on the equipment in question including cleaning, repair welding and replacement of the internal conveyor belt. Management does not actually question the ability of the maintenance crew to do the work in question. This is illustrated in the September 13, 1994 grievance answer of Mr. Williamson.

Management does assert that its action was necessary to get the work done on a timely basis and that the work was not the normal and routine function of maintenance.

The Employer asserts that outside contractors have, in the past, made major repairs to the washer.

The plant was shut down for the week commencing Monday, July 4th. The 4th and 5th were paid holidays.

An Employer witness testified that the plant was normally shut down for one week in the summer and a half week in the winter due to lack of work.

The contract with Koomler was made in early June but Notice was not given to the Union until July 1st.

The Employer does not deny that the notice was late but asserts that it was only a courtesy because the contractual prerequisites were not present.

There was testimony that the outside contractor used some of the Company equipment, but that Koomler had more advanced equipment.

The testimony from Union witnesses indicated that there were 12 maintenance department employees unscheduled and available during the period July 6th to 10th.

Being away during a general plant shutdown is comparable to being laid off as the term is used in Exhibit "G."

This would be the case even though the decision to shut the plant was independent of the decision to contract with Koomler. There is no question that, because of the shutdown, maintenance employees were available to do the job in question without interference with their regular work.

The Employer concedes that the maintenance employees have welding and other skills needed to work on the washer, and that they have worked on it in the past.

Management argues that the outside contractor could bring more specialized skills to get the job done in an efficient and timely manner.

One employee witness stated that he was not sure "our people could have done it on time."

We may suppose that Management, in using a specialized outside contractor, made a sound cost efficient decision. This would not per se excuse any failure to follow the contract.

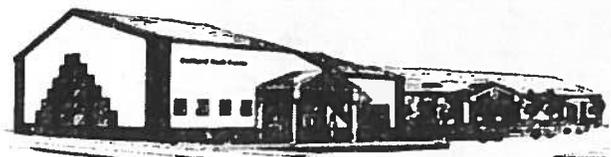
We affirm the Union contention that 12 unscheduled, qualified maintenance men could have completed the job on time.

Exhibit "G," the letter of Agreement dealing with outside Contracting, read as a whole, supports the Union position. The preamble sets out the intent of the parties to "minimize the effect of outside contracting."

Paragraphs 1 and 2 evidence an intent to utilize the apprentice program to train apprentices to minimize the number of outside contractors.

Part two further provides that the Company is committed to placing "PRIMARY RELIANCE" on its skilled trade employees to the extent consistent with sound business practice. This would indicate that Management would have to show that utilization of bargaining unit employees in this case would not be consistent with sound business practice.

To justify a sub-contract, Management must demonstrate that one of the five categories listed under paragraph 3 applies.



CORTLAND YOUTH BUREAU

35 Port Watson Street • Cortland, NY 13045 • (607) 753-3021 • Fax: (607) 753-3023 • www.cortland.org

TO: Brian Tobin, Mayor
Lori Crompton, Finance Department
Mack Cook, Finance Department
Callie Doyle, CYB
Dennis Gallagher, CYB
Chris Bistocchi, DPW
Linda Ferguson, 7th Ward

FROM: John McNerney, CYB

DATE: May 8th, 2013

RE: Insurance Check for Dexter Damage

Today my office finally received a check from New York Schools Insurance Reciprocal in the amount of \$8,402.42 for the damaged caused by a Cortland City School bus at Dexter Park. Please deposit the check into our operating budget line 7110.5407 to repair the fence at Dexter Park.

In the coming weeks Whitmore Fence company will replace 375 feet of fence along N. Franklin Street and Elm Street. This new fencing will replace the current fence and provide a upgraded appearance to the park. See the attached quote provide from Dean Whitmore and feel free to call me with any questions at 753-3021.



NEW YORK SCHOOLS INSURANCE RECIPROCAL

DATE ISSUED 5/02/13

CHECK NO. 0000076992

Description	Check Amount
Claim No: CTC-2012-005-002. Commercial Automobile Property Damage, Invoice No: First and Final - Claimant: City of Cortland City Hall DOL: 1/10/2013, damages to park on Franklin & Elm St.	\$8,402.42
CHECK TOTAL	\$8,402.42

THIS CHECK IS VOID WITHOUT A BLUE & GREEN BACKGROUND AND A WATERMARK PATTERN ON THE BACK - HOLD AT ANGLE TO VIEW

NEW YORK SCHOOLS INSURANCE RECIPROCAL

333 EARLE OVINGTON BLVD.
SUITE 505
UNIONDALE, NY 11553-3624

Valley National Bank
699 Hillside Avenue, New Hyde Park, NY 11040

CHECK NO. 0000076992

50-161
214

DATE
5/02/13

PAY: Eight thousand four hundred two and 42/100 Dollars

TO THE
THE ORDER
OF
CITY OF CORTLAND

CHECK AMOUNT
\$*****8,402.42

VOID AFTER 90 DAYS

MAIL TO
**CITY OF CORTLAND
ATTN.: CITY OF CORTLAND YOUTH BUREAU
35 PORT WATSON STREET
CORTLAND, NY 13045**

Mill T. K.

SIGNATURE HAS A COLORED BACKGROUND

⑈0000076992⑈ ⑆021401617⑆ ⑈0021772990⑈

WHITMORE FENCE WF Company

**Fred Whitmore, OWNER 126 NORTH STREET
(607) 844-9011 Dryden, NY 13053**

Quote

TO:

City of Cortland Youth Bureau
35 Port Watson St. Cortland
Project: Dexter Park Fence
Attn: John Mcnerney, director

Quote Date: 4/11/13

PHONE: 753-3021 x23

CELL: 423-2252

FAX: 753-3023

ESTIMATOR: Dean Whitmore

Quantity	Description	Unit Price	Amount
315	In.ft.of 4 ft. high total vinyl system industrial spec. chainlink		\$12,975.00
	Specifications:		\$0.00
	Coverage: 2 in. x 8 ga.(8ga.core)x 4 ft. high fused&bonded vinyl coated black		\$0.00
	Line Posts: 2 1/2 in. x 7 1/2ft. Lg-40 h.d.galv.pipe vinyl caoted black(8 ft. O.C.)		\$0.00
	Terminal Posts: 3 in. x 8ft. Lg-40 h.d.galv.pipe vinyl caoted black		\$0.00
	Top Rail:1 5/8 in. lg-40 h.d. galv. Pipe vinyl coated black(includes bottom t-wire)		\$0.00
60	In.ft.of 10 ft. high total vinyl system industrial spec. chainlink		\$0.00
	same Industrial specification as above on all 3 in. posts with the addition of a bottom & middle rail.		\$0.00
			\$0.00
	OPTION # 1		\$0.00
	for the same project as above with an upgrade of the 4 ft. chainlink to an industrial spec.decorative ornamental steel fence		\$0.00
	Specifications:		\$0.00
	Panel: Ameristar brand Montage II ,Majestic style 3 rail e-coat Black		\$0.00
	Posts: 3 in. sq.x 7 ft. 12 ga. Black		\$0.00
	Above described product carries a 20 year Warranty		\$0.00
	This Option includes the 60 ft. of 10 ft. high black chainlink behind the basketball court.		\$0.00
			\$0.00
	Total cost for the Option # 1 project \$ 30,955.00		\$0.00

Sub-Total \$12,975.00

Sales Tax \$0.00

Total \$12,975.00

Less Deposit \$0.00

TOTAL DUE: \$12,975.00

TERMS: Net 10 days from date of Invoice. A finance charge of 2% per month will be added to all past due balances. This is an ANNUAL PERCENTAGE RATE of 24%. The minimum FINANCE CHARGE is \$1.00 per month.

Exempt: CAP. IMP RESALE

Visa M/C Discover Check

Card # _____

Signature: John G. Mcnerney

Date: 5-6-13



3865 US Route 11
Cortland, NY 13045
(607) 218-0200

City of Cortland DPW
Franklin St
Cortland, NY 13045

NJPA Contract #060311 NH B95C TLB(as spec)	List	\$121,000.00	
	NJPA Contract Discount 30%	<u>\$ 36,300.00</u>	
		\$ 84,700.00	
	Freight	\$ 1,200.00	
	A & H	\$ 1,000.00	
	Mechanical Thumb(installed)	\$ 2,000.00	<u>88,900⁰⁰</u>
	Trade 1999 Ford 555TLB	<u>\$ 31,052.00</u>	<u>< 31,052⁰⁰</u>
	Grand Total	<u>\$ 57,848.00</u>	<u>57,848</u>

*Offer to trade 2014 approx(700 Hrs) \$38,000.00 ~~per yr~~ 2 yr
1e 19,000/yr

NJPA Contract #060311 NH B95C TLB(as spec)	List	\$121,000.00	
	NJPA Contract Discount 30%	<u>\$ 36,300.00</u>	
		\$ 84,700.00	
	Freight	\$ 1,200.00	
	A & H	\$ 1,000.00	
	Mechanical Thumb(installed)	\$ 2,000.00	<u>88,900</u>
	Trade 2005 LB75.B	<u>\$ 32,500.00</u>	<u>> 32,500 ></u>
	GRAND TOTAL	<u>\$ 56,400.00</u>	<u>56,400</u>

*Offer to trade 2014 approx(700 Hrs) \$38,000.00 ~~per yr~~ 2 yr
1e 19,000/yr

Dave Law
CNY Farm Supply

IO PW



3865 US Route 11
Cortland, NY 13045
(607) 218-0200

City of Cortland DPW
Franklin St
Cortland, NY 13045

NJPA Contract #060311

NH Skid Steer Loader Model 230(as per spec)	List	\$ 55,280.00
	NJPA Contract discount 30%	<u>\$ 16,584.00</u>
		\$ 38,696.00
	Freight	\$ 458.00
	A & H	<u>\$ 748.00</u>
	TOTAL	\$ 39,902.00
Trade: 1999 Gehl 6635		<u>\$ 10,142.00</u>
	GRAND TOTAL	\$ 29,760.00

• Bradco 24" 30 GPM Rock Saw	Retail	\$ 22,845.00
	Allowed Discount	<u>\$ 5,895.00</u>
	Net Price	\$ 16,950.00

*Offer to trade 2013 approx(250 Hrs) \$8000.00

Dave Law
CNY Farm Supply



3865 US Route 11
Cortland, NY 13045
(607) 218-0200

City of Cortland DPW
Franklin St
Cortland, NY 13045

Group #37000

Award #21459	Ferris 5100ZC33D with 61" Rear Deck	List	\$ 22,343.00
		NYS contract price	\$ 14,858.00
		A & H	\$ 270.00
		Freight	\$ <u>174.00</u>
		Total	\$ 15,302.00
	Trade 2008 JD 997 Zereturn		<u>\$ 5,402.00</u>
	GRAND TOTAL		\$ 9,900.00

*Offer to trade 2013 Approx(250 hrs per yr) \$3,000.00 per yr or
2014 Approx(250 hrs per yr) \$4,500.00 per yr

Dave Law

Youth B



3865 US Route 11
Cortland, NY 13045
(607) 218-0200

City of Cortland DPW
Franklin St
Cortland, NY 13045

HGAC/Buy Contract #GR01-12
Effective 1/1/12-12/31/13

Massey Ferguson Model 1660 4X4 with loader(as per spec)	List	\$ 46,870.00
	HGAC Contract Price	\$ 35,226.00
	Freight	\$ 652.00
	A & H	\$ 200.00
	TOTAL	\$ 36,078.00
Trade: 1998 NH 3930 4X4 with cab		\$ 6,500.00
Trade: 1973 Ford 3000 rops		\$ 2,000.00
Trade: 1997 Ford 545 D loader tractor		\$ 7,500.00
Trade: Landpride Brush cutter		\$ 400.00
	Total	\$ 19,678.00
• Landpride 72" Rotary Cutter		\$ 2,200.00
	GRAND TOTAL	\$ 21,878.00

Price Sold

7500
29,378.00

*Offer to trade 2013 approx(400 Hrs) \$ 5,000.00

Dave Law
CNY Farm Supply