

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1500

P: (518) 402-9185 | F: (518) 402-9018

www.dec.ny.gov

VIA FEDERAL EXPRESS

April 22, 2024

Advance Albany County Alliance
Local Development Corporation
111 Washington Avenue
Suite 100
Albany, NY 12210
Attn: Kevin O'Connor

RE: Cooperation Agreement
Site Name: AI Tech Site
Site No.: 401033

Dear Mr. O'Connor

Enclosed please find a fully executed Cooperation Agreement between the Advance Albany County Alliance Local Development Corporation and the New York State Department of Environmental Conservation.

If you have any further questions or concerns relating to this matter, please contact Attorney Mike Murphy at (518) 402-8564.

Sincerely,



Cheryl A. Salem
Legal Assistant II
Remediation Bureau
Cheryl.salem@dec.ny.gov

ec: M Murphy, NYSDEC



Department of
Environmental
Conservation

(518) 402-8599

SHIP DATE: 22APR24

ORIGIN ID:ALBA
CHERYL SALEM
NYSDEC CO
625 BROADWAY
14TH FLOOR - OGC
ALBANY, NY 12233
UNITED STATES US

ACTWGT: 1.00 LB
CAD: 25595570INET4535

BILL SENDER

TO KEVIN O'CONNOR

ADVANCE ALBANY COUNTY ALLIANCE

111 WASHINGTON AVENUE

SUITE 100

ALBANY NY 12210

(518) 447-5602

REF: 401033

INV:

DEPT: 1500



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TRK# 7760 5219 6905

TUE - 23 APR 5:00P
STANDARD OVERNIGHT

05 ALBA

12210
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**Agreement Among
The New York State Department of Environmental Conservation,
and the Advance Albany County Alliance Local Development Corporation**

This Agreement is entered on this 16th day of April, 2024, by and among the Advance Albany County Alliance Local Development Corporation ("Albany Alliance" or "Alliance") with an office at 111 Washington Avenue, Suite 100, Albany, New York 12210, and the New York State Department of Environmental Conservation ("NYSDEC"), with an office at 625 Broadway, Albany, New York 12233 (collectively, "Parties").

WHEREAS, NYSDEC is the Executive Agency of the State of New York responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL") and the New York State Finance Law ("SFL") and cleanup of contaminated properties pursuant to the ECL Article 27 and Article 12 of the Navigation Law ("NL"); and

WHEREAS, NYSDEC is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the NYSDEC and its Commissioner by Article 1, Title 3 of the ECL; and

WHEREAS, NYSDEC also has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution (see, e.g., ECL 3-0301.1.1); and

WHEREAS, NYSDEC is committed to the redevelopment of former industrial properties and supporting projects that advance the State of New York's Brownfield Cleanup Program [Article 27, Title 14], and the State's climate and clean energy initiatives enacted through the Climate Leadership and Community Protection Act; and

WHEREAS, Chapter 847 of the Laws of 1982 created the Hazardous Waste Remedial Fund and assigned custody to the Office of the State Comptroller who is to make funds available to NYSDEC for the investigation and remediation of hazardous waste Sites, and such funds have been made available to the NYSDEC which has already utilized such funds to perform sampling, assessment, and focused remedial actions at the former Al Tech Industrial Site, Site # 401003 ("Al Tech Site" or "Site"); and

WHEREAS, State Superfund remedial funds remain available for additional response action by the NYSDEC at the Al Tech Site, and the Department, which currently believes that the Al Tech Site is eligible to participate in the Brownfield Cleanup Program ("BCP"), is willing to oversee future remedial action measures pursuant to a Brownfield Cleanup Agreement ("BCA") with a Volunteer[s] if the Albany Alliance is successful in bringing a Volunteer into this project. The NYSDEC has made and exhausted all reasonable efforts to secure a voluntary agreement for payment of costs of, or implementation of, necessary remedial action from owners, operators, or other liable persons for past releases of contamination at this inactive hazardous waste site, but the NYSDEC has not identified any responsible party for that property having the ability to pay for

the investigation or cleanup of the Al Tech Site in large part due the bankruptcy of the former owner/operator; and

WHEREAS, the Albany Alliance (or a to-be-formed Limited Liability Company of which the Alliance is the sole member) may now obtain ownership of certain portions of the Site with the goal of redevelopment of such portions of the abandoned industrial property, a development opportunity that is particularly viable because of the existing energy and utility infrastructure which exists at the Site; and

WHEREAS, the Albany Alliance has identified certain portions of the Site, which include certain tax parcels as more fully described in Schedule A, attached hereto, or as thereafter amended (collectively, the “**Site Redevelopment Properties**”) on which redevelopment could be viable (in particular, portions of the real property on which Operable Units 1 and 4 are located); and

WHEREAS, the County has taken to Judgment two (2) tax map parcels which comprise the Site Redevelopment Properties which are the portion of Al Tech Site (NYSDEC Registry #401003) to which the Alliance is prepared to take title and attempt to interest a BCP Volunteer to whom it could sell and/or lease the parcels so that they are returned to the tax rolls and put back into productive commercial/industrial use; and

WHEREAS, the Albany Alliance is a not-for-profit corporation of the State of New York formed by the County, as authorized by the Albany County Legislature in Resolution 20-395 directing the Albany County Executive to establish the Alliance pursuant to Article 14 of the Not-For-Profit Corporation Law of the State of New York. The goal of the Alliance is to vigorously advance the prosperity, growth and economic development of the residents and businesses of Albany County; and

WHEREAS, the Albany Alliance, in furtherance of its statutory mission and purpose to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State, and to actively promote Albany County as a business-friendly location, is contemplating the acquisition of the Site Redevelopment Properties for the purpose of economic redevelopment; and

WHEREAS, the Albany Alliance will seek to have the Site Redevelopment Properties available for redevelopment, once the Site Redevelopment Properties are determined to be eligible for entry into the Brownfield Cleanup Program, at the earliest practicable commercially reasonable time on commercially reasonable terms, consistent with its mission and purpose, considering market conditions and applicable legal and regulatory requirements; and

WHEREAS, the Parties have a shared interest in ensuring that any environmental issues associated with the Site Redevelopment Properties do not interfere with the return of such properties to the tax rolls and to productive use; and that such redevelopment is timely and appropriately addresses the protection of public health and the environment; and

WHEREAS, the Albany Alliance did not cause, contribute, or have any involvement with

the acts and/or omissions that led to the contamination on the Site; and

WHEREAS, the Parties have a shared interest in (i) eliminating exposure pathways, if any, that exist on the portion[s] of the Site Redevelopment Properties (to which title will be held by the Albany Alliance), and (ii) to reserve their rights against the entities that caused the past release of hazardous substances on the Site and, if feasible, (iii) to recover cleanup costs of response incurred during redevelopment of the Site Redevelopment Properties; and

WHEREAS, this Agreement sets forth mutually agreeable principles which are intended to ensure cooperation between NYSDEC and the Albany Alliance, to establish an understanding of appropriate liability protection for the Albany Alliance, which shall not be deemed an Owner or Operator for purposes of liability for past releases of hazardous substances and wastes on the Site. In this regard, this Agreement is intended to recognize that the best interests of the public, including the possible reimbursement of costs from those responsible for the contamination, are served by the coordination and cooperation of the Parties. The objective of this Agreement is to ensure that full consideration is afforded these interests, and that the individual missions and responsibilities of each Party are fully considered; and

WHEREAS, it is in the interest of all Parties to work together to return the Site Redevelopment Properties to productive use, to eliminate liability concerns of the Parties, and to facilitate that any future development project will have some aspect of solar energy as a project component.

NOW, THEREFORE, it is agreed among NYSDEC and the Albany Alliance:

ARTICLE I PARTIES

1.1 For purposes of this Agreement the following terms shall apply:

- 1.1.1 The Albany Alliance shall mean the Advance Albany County Alliance Local Development Corporation (or a to-be-formed Limited Liability Company of which the Alliance is the sole member) focused on business development and promoting growth in Albany County. The Albany Alliance collaborates with public, private, and non-profit interests to create an economy that provides opportunities for all County residents.
- 1.1.2 The NYS Department of Environmental Conservation is the Department that has jurisdiction over Inactive Hazardous Waste Disposal Sites, including the Al Tech Site.

ARTICLE II COOPERATION

2.1 The Parties shall, on a regular basis, keep each other informed of and consult on matters of common interest, which are likely to lead to mutual collaboration to have a BCP

"Volunteer" to maintain certain Institutional Controls and Engineering Controls ("IC/EC") on the portions of the Site to be held by the Albany Alliance.

2.2 The NYSDEC recognizes the paramount importance to the Albany Alliance of having those portions of the Site to which it will hold title as listed on Schedule A (e.g. "Site Redevelopment Properties") deemed eligible for redevelopment and remediation under the State's Brownfield Cleanup Program in order to incentivize the reuse and redevelopment of the abandoned industrial Site.

2.3 The Parties agree that to facilitate the transfer of ownership and to undertake redevelopment of the Site Redevelopment Parcels, the existing boundaries of Site related Operable Units ("OUs") will likely need to be redrawn so that the resulting Albany Alliance parcels' title commitments can be prepared, the parcels surveyed and deeds properly filed with the Albany County Clerk and that the Albany Alliance parcels will be eligible for acceptance into the Brownfield Cleanup Program once a "Volunteer" is identified by the Albany Alliance and an approvable BCP application is submitted. The timing of such surveying will be discussed and scheduled by the Parties.

2.4 Consultation and exchange of information and documents under this Article shall be without prejudice to arrangements which may be needed to safeguard the confidential and restricted character of certain information and documents.

2.5 The Parties shall, at such intervals as deemed appropriate, convene meetings or conference calls to review the progress of activities being carried out under this Agreement and to plan future activities, including, but not limited to, seeking Federal Brownfields Program assistance if applicable.

2.6 The Parties may invite each other to send observers to meetings or conferences convened by them or under their auspices in which, in the opinion of a Party, another may have an interest. Invitations shall be subject to the procedures applicable to such meetings or conferences.

2.7 The Parties agree to cooperate and share information in furtherance of identifying maintenance of IC/EC measures being undertaken by one or both Parties and to assess the nature and extent of remaining contamination on the Site Redevelopment Properties and the extent of remediation that is likely to be required to address the contemplated industrial use of the Site Redevelopment Properties, and the most efficient manner of pursuing remediation, if and to the extent it is needed on the Site Redevelopment Properties, by either a future BCP Volunteer[s] or the State of New York. In this regard, the Parties agree that the Albany Alliance is not, and shall not be, deemed liable and/or responsible for implementing active, ground intrusive, remedial action to address the past release and/or current migration of hazardous substances or wastes, known or unknown, at the Al Tech Site, including the Site Redevelopment Properties.

2.8 The Parties will share all environmental monitoring activities and studies they conduct on the Site Redevelopment Properties, and the Albany Alliance will advise any future

BCP Volunteer[s] of the cooperative relationship with the NYSDEC insofar as open data and report sharing. NYSDEC will share information in its possession provided such information can appropriately be released pursuant to the Freedom of Information Law ("FOIL"). Unless legally required, no formal FOIL request shall be necessary for such information to be provided to the Parties.

2.9 The Parties agree to provide access to those portions of the Site to be held by the Albany Alliance, including leased portions on which a BCP Volunteer[s] might implement site preparation activities.

2.10 The Parties agree to coordinate the scope of site preparation/site investigation/site remediation activities that may be implemented by a BCP Volunteer; such that the Albany Alliance might have certain IC/EC obligations, the NYSDEC might have certain investigation and remediation obligations, and a future BCP Volunteer[s] might have site preparation obligations as established in a Brownfield Cleanup Agreement. The Parties agree that the holding of title by the Albany Alliance will not cause the Albany Alliance to be deemed, under State and/or Federal environmental laws, an Owner or Operator of the abandoned Al Tech Site. Upon taking title to portions of the Site and agreeing to make efforts to identify a redevelopment entity that would agree, as part of a remedial action program, to comply with necessary IC/EC obligations, the Albany Alliance will be considered a bona-fide prospective purchaser as well as being entitled to the liability protection set forth in Article III below.

2.11 The Albany Alliance will use best efforts to notify NYSDEC in writing no later than 60 days after the effective date of this Agreement, as to which of the portions of the Al Tech Site Properties it expects to take title.

ARTICLE III COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

3.1 Subject to Sections 3.3 and 3.4 below, NYSDEC covenants not to sue or seek payment for past or future costs of response at the Al Tech Site from the Albany Alliance, and acknowledges that the Albany Alliance is not a "responsible" or liable party, owner or operator as such terms are defined in New York State Environmental Conservation Law ("ECL") (ECL §27-1301 et seq.) and the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.) and/or the Resource Conservation and Recovery Act ("RCRA", 42 U.S.C. Ch. 82 § 6901 et seq.). Similarly, to the extent that the Albany Alliance enters a contract of sale or lease to a party eligible to enter the Brownfield Cleanup Program as a "Volunteer", the Albany Alliance shall not be deemed a "responsible" or liable party, as an Owner or Operator, as these terms are defined in New York State law (ECL §27-1301 et seq. and §27-0901 et seq.) and Federal law (42 U.S.C. §9607(a)), and the Resource Conservation and Recovery Act ("RCRA", 42 U.S.C. Ch. 82 § 6901 et seq.).

3.2 The Albany Alliance represents that it did not cause, create, contribute to, influence, direct, oversee or manage any action or omission that resulted in the release of hazardous

substances on the Site, and further state that it will not lease or sell parcels on the Site to any party that caused or contributed to contamination conditions on the Site. The Albany Alliance retains all relevant statutory defenses available under any applicable state or federal environmental law including, but not limited to, those provided within the ECL, Navigation Law, Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or the Resource Conservation and Recovery Act. The Parties to this MOU did not own nor conduct business operations on the Al Tech Site resulting in the release of hazardous substance at the Site.

3.3 Successors and assigns in title of the Albany Alliance will not receive the covenant not to sue described above, and they remain liable for any future costs incurred by the State related to the existing discharge or release to the extent allowed by law. Successors and assigns in title that enter the Brownfield Cleanup Program, or other NYSDEC Administrative Order, to implement investigation and remedial action measures under NYSDEC oversight and are issued a Certificate of Completion shall be entitled to the liability limitation protections set forth at ECL 27-1421, subject to the terms and conditions stated therein. This provision is applicable only to Third Party Entities obtaining title and not to a "successor" to or creation of the Albany Alliance that continues the work of the Albany Alliance. For example, the Alliance intends to form a limited liability company (of which the Alliance shall be the sole member) and such limited liability company shall be entitled to the same liability protections provided under this Agreement to the Albany Alliance.

3.4 This Agreement shall be construed to provide liability protection to the Albany Alliance upon taking title to portions of the Site.

3.5 A) The liability protection provisions, the municipal exemption of liability provisions set forth in both ECL Article 27, Title 13 and in CERCLA, and the Covenant Not to sue are available to the Albany Alliance because they were not involved with the release, disposal or discharge of contamination on the Site. The Albany Alliance represents that it had no relationship with any former owner, operator, or arranger involved with the release of hazardous substances or waste at the Site and had no involvement with contaminant conditions on the Site, and never had any management or direction or control of past activities undertaken by others at the Site.

B) NYSDEC hereby reserves its respective rights concerning:

1) circumstances where the Albany Alliance causes or contributes to post-real estate closing releases or threats of release at the Site of any hazardous substance (as that term is defined at 6 NYCRR Part 597) or becomes responsible according to applicable principles of statutory or common law for any discharge of petroleum occurring at the Properties, other than existing contamination, and such reservation of rights does not extend any liability to the Albany Alliance to past, pre-real estate closing pre-existing contaminant conditions;

2) circumstances where the Albany Alliance fails to exercise "appropriate care" with respect to existing contamination by failing to take reasonable steps to: (i) stop any

continuing release from any above ground vessels; (ii) prevent any threatened future release of hazardous substances from vessels on the property; (iii) notify the NYSDEC and take reasonable measures to mitigate exposure to any previously released contamination that may be uncovered and (iv) notify lessees of the obligation to follow the IC/EC measures applicable to the parcels subject to this MOU. Upon notice by the Albany Alliance of any such condition, the NYSDEC may take all appropriate action, including investigatory or remedial action, to protect public health and the environment. In the event that the NYSDEC has to take action as described herein, the liability protection afforded to the Albany Alliance remains in place. "Appropriate care" for purposes of this Agreement shall not include a requirement to remediate previously released contamination at the Property. Additionally, such acts constituting Appropriate care shall not in and of itself constitute management of the Property. Furthermore, pre-development activities, studies, engineering, analysis, or marketing of such Property, the issuance of Requests for Proposal, notice of auction, the decision to lease, sublease, or sell, the negotiation and execution of a development agreement, a renewable energy credits (REC) purchase and sale agreement, and related documents with terms acceptable to the seller, or, any related acts by the Albany Alliance or a Volunteer shall not constitute management with respect to any liability protection afforded by this Agreement or the applicable environmental laws set forth and mentioned herein.

3) circumstances where the Albany Alliance causes the use of the Property to change from the contemplated use to one requiring a greater level of cleanup of remaining contamination before that use can be implemented with sufficient protection of human health and the environment.

4) taking action based on fraud or gross negligence committed by the Albany Alliance that causes a release of contamination to the environment.

3.6 Reserved.

3.7 Reserved.

3.8 The Albany Alliance agrees to attempt to require, as a condition of any future sale or lease of the portions of the property on which it holds title, that any party purchasing or leasing all or portions of the property which has been identified by NYSDEC as requiring remediation must, unless otherwise agreed by the NYSDEC, enter a remedial program approved by NYSDEC in order to undertake any necessary investigation and remediation; including, but not limited to, the Brownfield Cleanup Program.

3.9 If, after investigation, the NYSDEC determines that an Environmental Easement, pursuant to Article 71 of the ECL is required to restrict certain uses on the Property, the Albany Alliance (depending on it holding title to the site) shall execute such an environmental easement on the portions of the Site on which it holds title.

ARTICLE IV - RESERVED

ARTICLE V

TERM, TERMINATION AND AMENDMENT

5.1 This Agreement is effective upon execution by the NYSDEC and shall be binding upon and inure to the benefit of every Party that signs the Agreement. This Agreement may be terminated or amended only in writing by all Parties to the Agreement.

5.2 This Agreement shall apply only to the Properties listed on the attached Schedule A, and additional Properties as added to Schedule A from time to time. The Albany Alliance may add property to Schedule A with approval from the NYSDEC by providing notice as specified in Article VI of the intention to add a Property to this Agreement.

5.3 Article III shall survive any termination of this Agreement relative to all Properties listed in Schedule A.

ARTICLE VI

NOTICES AND ADDRESSES

6.1 Any notice or request required or permitted to be given or made under this Agreement shall be in writing and shall be deemed sufficient if sent by regular first-class mail and certified mail, or personally delivered during business hours, to the addresses for the parties set forth above or by e-mail by agreement of the parties.

ARTICLE VII

MISCELLANEOUS

7.1 This Agreement comprises the complete understanding of the Parties in respect of the subject matter in this Agreement.

7.2 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

7.3 The Albany Alliance intends to form a limited liability company of which the Alliance will be the sole member. The Department acknowledges that such limited liability company formed by the Alliance shall serve as the entity which shall receive the right from the County to receive title to the Site Redevelopment Properties. The Alliance is authorized to assign all of its rights, benefits, and obligations pursuant to this Agreement to such limited liability company and it shall be entitled to the liability protections set forth in Article III above.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

By: Andrew Guglielmi

Name: Andrew Guglielmi

Title: Director, Division of Environmental Remediation

Date: April 16, 2024

ALBANY ALLIANCE

By: Kevin O'Connor 

Name: Advance Albany County Alliance

Title: Chief Executive Officer

Date: 4/2/2024

Schedule A – Site Redevelopment Properties by Address & Tax Parcel Number

1. 2A Lincoln Avenue (Tax Map No. 44.1-1-7.2)
2. 201 Spring Street Road (Tax Map No. 44.1-1-7.1)