

**COOPERATIVE AGREEMENT
BETWEEN
THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND
TECUMSEH REDEVELOPMENT, INC.**

This Cooperative Agreement (CA 00532) by and between the New York State Department of Environmental Conservation, hereinafter referred to as the Department and Tecumseh Redevelopment Inc., hereinafter referred to as Tecumseh.

WITNESSTH:

WHEREAS, by Agreement dated February 13, 1964, the State of New York and the United States Army Corps of Engineers (USACOE) agreed to build and maintain a flood protection project along Smokes Creek in Lackawanna, New York known as the Smokes Creek Flood Control Project (SCFCP); and

WHEREAS, the Department is required, as part of its obligations under the Agreement referenced above, to maintain the SCFCP; and

WHEREAS, Tecumseh, an affiliated company of ArcelorMittal USA, is the owner of approximately 1,000 acres of real property located along the west side of Route 5, or adjacent thereto, in Lackawanna, New York; and a portion of the SCFCP is on Tecumseh's property; and Tecumseh's property also contains lands in the Brownfield Cleanup Program and/or under Resource Conservation and Recovery Act (RCRA) Corrective Action Orders administered by the Department; and

WHEREAS, the Department and Tecumseh declare that it is to their mutual advantage to cooperate during the dredging process.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

The Department agrees as follows:

1. That commencing in or about July 2014, as part of its obligations under the 1964 agreement with the USACOE, the Department its representatives, employees, agents or contractors will maintenance dredge approximately 28,400 CY of Smokes Creek sediment and excavate approximately 8,200 CY of Smokes Creek bank soils in an effort to restore, to the extent practical, the original hydraulic capacity of the SCFCP; and
2. That a portion of the flood control work will be conducted on Tecumseh's property; and
3. That the portion of Tecumseh's property that was, or will be, entered upon and occupied by the Department, its representatives, employees, agents or contractors, for the performance of the SCFCP dredging work is depicted on the map attached as Exhibit A; and
4. That all work will be conducted, and all other obligations of the Department or contractors will be carried out, pursuant to the plans, specifications, and requirements contained in the Project Manual JDE Number 3128909999 CR11, dated January 21, 2014, and all subsequent addenda, prepared by URS Corporation for the Dormitory Authority State of New York (DASNY) (the "Work"), (Exhibit B, available electronically with permission of URS) ("the Project Manual").

Tecumseh agrees as follows:

1. Upon proper notice to Tecumseh, as provided for in the Project Manual, Tecumseh will permit entry on and use of its property by the Department, its agents, employees, contractors and representatives. Such right of entry includes, but is not limited to the right to:

- a. Mobilize, operate and maintain dredging equipment and construction equipment to convey dredged, excavated, and woody material to the approved on-site and off-site disposal areas as defined on Exhibit A.
- b. Construct and maintain on Tecumseh's property, water pollution control devices and erosion and sediment control devices, as defined in the Project Manual for the duration of this Agreement.
- c. Maintain existing petroleum absorbent spill booms and deploy additional booms along the banks and/or across segments of the Middle Reach of Smokes Creek as necessary to control the release of floatable petroleum. Maintain booms until the potential for post-dredging petroleum releases cease.
- d. Assemble, maintain, and utilize a pipeline and a series of pumps to convey sediment in a water/slurry mixture from Smokes Creek across Tecumseh's property, to the US Army Corps of Engineers Confined Disposal Facility (CDF) No. 4, located adjacent to the north end of Tecumseh's property.

Subject to Tecumseh's prior approval the pipeline may be assembled along the route specified in the Project Manual defining the Work, so long as the assembly, operation and maintenance of the pipeline does not interfere with

Tecumseh, or Tecumseh's agents', licensees' or lessees' operations at the property.

e. Set up and use equipment to survey the bed and bank of Smokes Creek to determine compliance with design grades.

f. Utilize Tecumseh's property to truck soil and sediment to the CDF for disposal, using routes and locations identified by Tecumseh in its sole discretion.

g. Utilize Tecumseh's property to truck stream bank soils that are not eligible for disposal in the CDF (because they were excavated from areas above the ordinary high water mark of the creek, elevation 574.1 NGVD 29), to the two locations on Tecumseh's property depicted on the map attached as Exhibit A as "Stockpile Staging Area".

i. Once stockpiled, the soil and sediment will undergo characterization sampling by the Department, its agents, employees, contractors or representatives for re-use purposes. The results of the material characterization will be provided to Tecumseh for their use in determining, in its sole discretion, the final placement of the soil and sediment.

ii. Once it has been determined by Tecumseh and the Department that the soil in the Stockpile Staging Area can be re-used it must be properly re-used by Tecumseh pursuant to applicable rules, regulations and Department Order(s).

- a. Soils that meet standards for commercial use found at NYCRR §375-6.7(d)(ii)(b) may be re-used on the Brownfield portions of the property.
 - b. Soils that exceed the standards found at NYCRR §375-6.7(d)(ii)(b) must be removed from Tecumseh's property and disposed of by the Department, its agents, employees, contractors or representatives at a permitted disposal facility within ninety (90) days of placement.
 - h. Access to Tecumseh's property is limited to the area depicted on the map attached as Exhibit A. Only the Department, its agents, employees, contractors and representatives shall be allowed to access these areas. If the Department's agents, contractors, representatives or invitees are found outside of the permitted area they will be considered to be trespassing and may be subject to expulsion and possible criminal prosecution.
- 2. Carry on any other activity reasonably necessary for the completion of the Work, together with the rights, at all reasonable times during the duration of this agreement, of ingress, egress and regress, pursuant to, and consistent with the terms of this Agreement, by the Department, its employees, agents, contractors and/or representatives for the purposes connected with the above work.
- 3. Upon completion of the Work, DEC will evaluate the adequacy of the Work to address the contamination referenced by Spill Number 1213134 and, DEC will, if it deems appropriate and at its sole discretion, render a "no further action determination."
- 4. The Department covenants that all Work performed hereunder will be done at no cost or expense to Tecumseh; provided, however, this does not constitute a waiver of any

rights the Department may have to recover such cost from any responsible party, pursuant to relevant provisions of statutory or common law.

5. When the Work is complete, or this agreement expires or is terminated, the Department, its representatives, employees, agents or contractors agree to make all necessary and reasonable repairs to the property so that the grounds entered upon are replaced and returned as nearly as possible to their condition on the date the SCFCP Work started.
6. The Department hereby agrees to indemnify and hold Tecumseh harmless for any and all causes of action in law or equity, arising directly from the negligence of the Department or its employees, to the extent attributable to said negligence, in the use of the Tecumseh's property, for the purposes described herein. The duty to indemnify and hold harmless shall be conditioned upon delivery by Tecumseh, to the Attorney General, the original or a copy of any summons, complaint process, notice, demand or pleading within five days of receipt.
7. Tecumseh hereby acknowledges that this indemnification, hold harmless and release agreement is given in consideration of allowing the Department to use its property on the stated dates, for the stated purposes, and that the consideration is fair and adequate.
8. The Department's representatives, agents or contractors have comprehensive general liability insurance for the activities conducted on this site and will add ArcelorMittal USA and all affiliated companies as an additional insured to their policy with an endorsement indicating the same. The Department will cooperate with Tecumseh in pursuing with the insurer any claim(s) that may arise.

9. The Department is self-insured. The General Liability and Property Damage exposures of the State of New York, and those of State agencies, are self-retained. Suits for bodily injury and property damage are brought in the New York State Court of Claims, which is supported by a multimillion dollar annual appropriation. State employees are protected against suits under Public Officers Law Section 17 for actions or alleged actions that occur while they are acting within the scope of their employment.
10. The interpretation, validity and performance of this Agreement shall be governed by the law of the State of New York.
11. Tecumseh represents that no other party, affected by any interest or activity set-forth above, has authority to interfere with Tecumseh's grant of access under this Agreement.
12. This Agreement represents the entire understanding of the parties concerning the subject matter of this Agreement and it may not be modified except in writing executed by both parties.
13. This Agreement does not supersede, modify, or replace any other Order or Agreement between the Department and Tecumseh regarding the property.

THIS AGREEMENT is valid from the date hereof until March 1, 2015, unless otherwise extended by mutual written agreement between the parties, and shall inure to the benefit of and bind the distributees, legal representatives, successors and assigns of the parties.

In **WITNESS WHEREOF**, the individuals listed below are authorized to sign and execute this Cooperative Agreement on the date appearing above their respective signatures.

Dated: March 6, 2014

Tecumseh Redevelopment, Inc.

By: John Schul

Title: Real Estate Manager

Dated: March 10, 2014

New York State Department of
Environmental Conservation

By: James J. [Signature]

Director of Management and Budget Services

Title: _____