NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

IN RE:

City of Amsterdam
Mohasco Complex
Lyon Street & Forest Avenue

STATE ASSISTANCE
CONTRACT

SA Contract #: C302571

Project Site #: B-00052-4

WHEREAS, the New York State Department of Environmental Conservation ("Department"or "NYSDEC") is authorized by Article 56 of the New York State Environmental Conservation Law (hereinafter the "ECL") to enter into contracts on behalf of the State to provide State Assistance ("Contract"); and

WHEREAS, the Legislature has determined that the preservation, enhancement, restoration and improvement of the quality of the State's environment is one of government's most fundamental obligations; and

WHEREAS, the Legislature authorized the Department to enter into Contracts with municipalities to provide State Assistance to them to develop and implement environmental restoration investigation and remediation projects approved by the Department for certain properties held in title by them; and

WHEREAS, Municipality has applied for State Assistance to develop and implement an environmental restoration project, the purpose and scope of which is set forth in Schedule A ("Work Plan") of this Contract, on Site that is described in Appendix C by metes and bounds and by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor; ("Project Site"); and

WHEREAS, Municipality agrees to undertake all work and to comply with all terms and conditions of this Contract; and

WHEREAS, Municipality submitted an approvable application for State Assistance, including submission of its documentation of its authorization to enter into this Contract, and of its authorization of the person signing the same to do so; and

WHEREAS, Municipality agrees that it will fund its portion of the cost of said Project in accordance with the cost-sharing provisions of Title 5 of ECL Article 56 and its regulations; and

WHEREAS, the Department's execution of this Contract is made in reliance upon the information provided by, and representations of, Municipality in its application papers and in this Contract; and

WHEREAS, Municipality has complied and commits to continue to comply with the requirements for State Assistance to municipalities established under Article 56 of the ECL.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Public Participation Plan

Municipality agrees to implement the Department-approved public participation plan for an environmental restoration project in accordance with its terms, a copy of which plan is set forth in the Work Plan and incorporated into this Contract. The public participation plan must provide that if Municipality elects not to proceed with remediation of the Site, Municipality shall provide timely and accessible disclosure of the Municipality's decision and the results of the investigation to the interested public. The plan shall provide for adequate public notice of the Municipality's decision and availability of the investigation results for a period of no more than 45 days from the date of the notice. The plan shall provide an opportunity for submission of written comments to Municipality and the Department; and the Municipality shall file the notice of the results of the investigation in the office of the Recording Officer for the county or counties where the land is situated, as authorized by subdivision three of section three hundred sixteen-b of the Real Property Law.

II. Development, Performance and Reporting of Work Plans

A. Work Plan Requirements

Municipality shall prepare and implement the work plans ("Work Plan" or "Work Plans") under this Contract in accordance with the requirements of ECL Article 56 Title 5 and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination at and emanating from the Site.

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for the Site.

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if any other Work Plan provides for operation, maintenance, and/or monitoring.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Contract shall be submitted within forty (40) days after the effective date of this Contract or such reasonable time as the Department may approve. Thereafter, Municipality can submit such other and additional work plans as it deems appropriate.

2. A proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities,

a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts to approve, modify, or reject a proposed Work Plan within forty-five (45) Days from its receipt or within fifteen (15) days from the close of any public comment period, if applicable, whichever is later, or such reasonable time as the Department may approve. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an enforceable part of this Contract and shall be implemented in accordance with the schedule contained therein. If the Department disapproves a Work Plan, the reasons for such disapproval shall be provided in writing. In the event the Department disapproves a Work Plan, within twenty (20) days after receiving written notice of such disapproval, Municipality shall elect in writing to modify or expand it within 30 days of such disapproval notice, or complete any other Department-approved Work Plan(s).

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or the Remedial Work Plan.

4. During all field activities, Municipality shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Municipality to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and which shall be enforceable under this Contract.

D. Progress Reports

Municipality shall submit a written progress report of its actions under this Contract to the parties identified in Paragraph XV by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Municipality in connection with this Site, whether under this Contract or otherwise, in the previous reporting period, including quality assurance/quality control information, information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, efforts made to mitigate such delays, and information regarding activities undertaken in support of the Public Participation Plan during the previous reporting period and those anticipated for the next reporting period.

E. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Municipality shall submit a final report that shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any

additional data that must be collected; and "as-built" drawings. The final report for an Investigation Work Plan shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Contract that those activities were performed in full accordance with the Investigation Work Plan, and all other Work Plan final reports shall contain a certification made by a Professional Engineer with primary responsibility for the day to day performance of the activities under this Contract that all such activities were performed in full accordance with the Department approved Work Plan.

2. Within sixty (60) days of the Department's approval of a final report or such reasonable time as the Department may approve, Municipality shall submit such additional Work Plans as it proposes to implement.

F. Remedial Investigation/Alternatives Analysis Report

Municipality shall develop an Remedial Investigation/Alternatives Analysis Report ("RI/AAR") and submit such evaluation to the Department for review and approval as a Final Report on the Investigation of the Site.

G. Review of Submittals other than Work Plans

1. The Department shall timely notify Municipality in writing of its approval or disapproval of each submittal other than a Work Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Contract.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reasons for its disapproval and may request Municipality to modify or expand the submittal. Within twenty (20) days after receiving written notice that Municipality's submittal has been disapproved, Municipality shall elect in writing to: (I) modify or expand it within 30 days of such disapproval notice; (ii) complete any other Department-approved Work Plan(s); or (iii) invoke dispute resolution pursuant to Paragraph XVII. If Municipality submits a revised submittal and it is disapproved, the Department and Municipality may pursue whatever remedies may be available under this Contract or under law.

H. Department's Determination of Need for Remediation

The Department shall determine upon its approval of the Alternatives Analysis Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a determination that remediation, or additional remediation, is not needed for protection of public health and the environment, it shall prepare for public comment a Proposed Remedial Action Plan ("PRAP") setting forth that No Further Action is an appropriate remedy for the Site. If the proposed remedy for the Site remains the same after the public comment period has passed and a Responsiveness Summary has been prepared, the Department shall issue a Record of Decision ("ROD") containing such "No Further Action" remedy. This Contract shall then terminate upon the Department's issuance of a Satisfactory Completion of Project letter.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, the Department shall prepare for public comment a PRAP, setting forth that No Further Action is an appropriate remedy for the Site as long as certain institutional and engineering controls, if necessary, are implemented. If the proposed remedy for the Site remains the same after the public comment period has passed and a Responsiveness Summary has been prepared, the Department shall issue a ROD and Municipality shall implement a "Site Management Plan", if required by the Department to ensure sufficient protection of the public health and the environment. Municipality shall satisfy the requirements of Paragraph XIII of this Contract with respect to causing an Environmental Easement to be filed and furnishing proof of filing to the Department. Upon receiving proof that Municipality has complied with Paragraph XIII of this Contract, this Contract shall terminate upon the Department's issuance of a Satisfactory Completion of Project letter.

3. If the Department determines that remediation, or additional remediation, is needed, the Department shall prepare a PRAP for public comment setting forth the Department's preferred remedial alternative for the Site. Within 60 days of the Department's issuance of a ROD, Municipality may elect to submit for review and approval a proposed Remedial Work Plan (or a revision to an existing Work Plan for the Site) to conduct an environmental restoration remediation project on the Site.

i. If Municipality elects not to submit or negotiate a proposed Remedial Work Plan under this Subparagraph, then Municipality shall comply with the Public Participation requirements under Paragraph I of this Contract; implement a "Site Management Plan", if required by the Department to ensure sufficient protection of the public health and the environment; and Municipality shall satisfy the requirements of Paragraph XIII of this Contract with respect to causing an Environmental Easement to be filed and furnishing proof of filing to the Department. Upon receiving proof that Municipality has complied with Paragraphs I and XIII of this Contract, this Contract shall terminate in accordance with the terms of Paragraph XVI.A. This Contract shall then terminate upon the Department's issuance of a Satisfactory Completion of Project letter.

ii. If Municipality elects to submit and implement an approvable Remedial Work Plan under this Subparagraph, it shall deliver to the Department an application to undertake an environmental restoration remediation project, as defined in the most recent version of the Department's Procedures Handbook for Environmental Restoration Projects" available at the time of the application for State Assistance. If the application is approved, the Department shall notify Municipality in writing and the Remedial Work Plan (or a revision to an existing Work Plan for the Site), shall be incorporated into and become an enforceable part of this Contract and shall be implemented in accordance with the schedule contained therein as Schedule "A".

I. Submission of Annual Reports, if required

In the event that the remedy for the Site, if any, or any Work Plan for the Site requires a Site Management Plan as a consequence of operation, maintenance, and monitoring requirements, including reliance upon institutional or engineering controls, Municipality shall file an annual report on the 1st day of the month following the anniversary of the start of the Site Management Plan and continuing until the Department notifies Municipality in writing that such annual report

may be discontinued. Such annual report shall be signed by a Professional Engineer or by an expert approved by the Department to perform that function and certified under penalty of perjury that the institutional and/or engineering controls are unchanged from the previous certification and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a violation or failure to comply with the approved Site Management Plan. Municipality shall notify the Department within twenty-four (24) hours of discovery of any breach, upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, Municipality shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the annual report required by this Subparagraph as well as in any progress reports required by Paragraph II.D.. Municipality can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

III. Contemplated Use

Municipality represents that the Site will be used for: Commercial/Industrial ("the Contemplated Use"), and Municipality agrees for itself and for its lessees and successors in title that any proposed change to the Contemplated Use shall be governed by the provisions of ECL 56-0511 and any implementing regulations thereto.

IV. Enforcement and Force Majeure

This Contract shall be enforceable as a contractual agreement under the laws of the State of New York. Municipality shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Contract as a result of a Force Majeure Event provided it notifies the Department in writing within ten (10) days of when it obtains knowledge of any such event. Municipality shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Contract. Municipality shall have the burden of proving by a preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

V. Entry upon Site

A. Municipality hereby agrees to provide access to the Site and to all relevant information regarding activities that may have involved hazardous waste at the Site in accordance with the provisions of ECL 56-0515. Such access shall be for purposes of ensuring that the Site is investigated and remediated in accordance with Department-approved plans, that any operation, maintenance, and monitoring plan for the conditions on such Site is being implemented satisfactorily, that the engineering and/or institutional controls are continually maintained in the manner the Department may require, that no person has engaged or is engaging in any activity that is not consistent with restrictions placed upon the use of the Site or that will or that reasonably is anticipated to: prevent or interfere significantly with a proposed, ongoing or completed project; or expose the public health or the environment to a significantly increased risk of harm or damage from such Site. The Department may carry out any measures necessary to return the Site to a

condition sufficiently protective of human health, in accordance with ECL 56-0509.4; and neither Municipality nor any of successors in title, lessees or lenders shall interfere with such access.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the Site complies with the terms and conditions of this Contract; such right of inspection shall survive termination of this Contract.

VI. State Assistance Amount

The Commissioner shall pay Municipality for its Eligible Costs in conducting the Project in an amount not to exceed one million six hundred twenty-six thousand dollars ($1,626,000.00), which amount has been determined by the Commissioner to be up to 90 percent of the estimated Eligible Costs for on-site work and 100% of the Eligible Costs of any off-site work directed by the Department to be undertaken outside the boundaries of real Site that is subject to an environmental restoration project approved by the Department. The Department shall not pay for work that is not an Approved Activity, as defined in the "Glossary" which is attached and made a part of this Contract. The Department shall not pay for Department-approved proposed work that was not completed to the Department's satisfaction. Municipality may contribute its share of the Eligible Costs of the project from sources deemed eligible pursuant to Article 56 and its regulations thereto. If the actual Eligible Costs are lower than those used to calculate the estimated Eligible Costs amount, the parties agree to amend this State Assistance Contract to apply the same percentage shown above to the actual Eligible Costs in order to determine the revised amount. Upon request by the Department, the Municipality agrees to execute and return the Contract Amendment to the Department within 90 days of receipt of a Contract Amendment that will identify the revised Contract amount.

VII. Reimbursement of Costs

A. State Assistance shall be provided to Municipality in accordance with Schedule B - "Payment Schedule", which is attached and made a part of this Contract and the Record Keeping and Payment Guide. All claims for reimbursement shall be accompanied by documentation which substantiates the eligibility of costs claimed to date, as required by the Department and the Office of the State Comptroller. The voucher must be signed by a duly authorized person.

B. If upon final audit of the Project by the Office of the State Comptroller, the Department determines that overpayment above the amount due has occurred, Municipality shall make full repayment to the State of New York, through the Department and for deposit into an appropriate account within sixty (60) days of notification of Municipality by the State of such overpayment, or at such later date agreed upon by the parties, if the parties agree to a later date, and in accordance with the payment procedures, schedules and policies of Municipality.

VIII. Disposition of Site

A.. In the event that there is a Disposition of the Site or any portion of such Site, the amount of State Assistance shall be recalculated using the value of the Disposition of the Site. The Department has the option of either reducing the amount of the Contract if the project is ongoing or requesting reimbursement of the amount owed. The amount of money owed the State

is defined as an amount of money, not to exceed the amount of State Assistance provided under this Contract, by which the value of the disposition of the Site exceeds Municipality's cost of the Site including taxes owed to Municipality upon acquisition and Municipality's cost of the environmental restoration project. For purposes of this subparagraph, the "value of the Disposition of the Site", or that portion of the Site that is disposed, consists, if the Site is disposed by transfer of title, of the higher of the Site's sale price or the Site's fair market value at time of sale; or, if the Site is disposed by lease, the higher of the present worth of the stream of rent over a 30 year period beginning the effective date of this Contract or the present worth of the fair market value of the stream of rent over the same 30 year period. However, if the Site is located in an economic development zone or in a zone equivalent area, as those terms are defined in sections 957 and 959(bb), respectively, of the general municipal law; or if the Site is located in a project area that is the subject of a redevelopment plan approved by Municipality's legislative body under Article 18-B of the general municipal law; or if the Site will be used to maintain or expand the supply of housing for persons of low income and families of low income as section 2 of the private housing finance law defines them, then if the Site is disposed by sale, the "value of the Disposition of the Site", or that portion of the Site that is disposed, consists of the Site's sale price, and if the Site is disposed by lease, the present worth of the stream of rent over a 30 year period beginning the effective date of this Contract.

B. If Municipality disposes of the Site by sale to a responsible party, Municipality shall collect from such responsible party, in addition to such other consideration, an amount of money constituting the amount of State Assistance provided to Municipality under this Contract plus accrued interest and transaction costs and Municipality shall pay such funds immediately to the Department for deposit into an appropriate account.

IX Force Account

Municipality shall seek prior Department approval of any proposal to use Municipality's employees to perform Project related activities. Municipal administrative costs associated with the Project are not eligible for reimbursement. The Department will not approve such proposals unless Municipality can demonstrate that Municipality's employees possess the necessary competence to perform the work in question and that the work can be more economically performed and done on a timely basis by the use of Municipality's employees. The cost of any work performed by Municipality's employees which has not received prior written Department approval shall be excluded from the Project's Eligible Cost used to calculate the State Assistance for the Project until such time, if ever, that the Department approves the use of such Municipality's employees. If written Department approval is given to use Municipality's employees for a specified task or activity, Municipality shall maintain such records as the Department may require to document the costs of such use.

X. Cost Recovery

A. The State hereby reserves the right to seek to recover the full amount of any State Assistance provided under this Contract through litigation brought under Article 56 of the ECL or other statute or under the common law, or through cooperative agreements, with responsible parties, other than the following:

1. Municipality; and

2. any successor in title to the Site, any lessee of the Site, and any person that provides financing to Municipality, such successor in title, or such lessee relative to the remediation, restoration, or redevelopment of the Site, that did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any hazardous substance located at the Site and did not own the Site before Municipality acquired title to the Site.

B. Municipality shall assist the Department and/or the State in compelling responsible parties to bear the cost of the Project by providing upon request by the Department all information that exists as of the start of the term of this Contract that identifies the Site's responsible parties and all other information acquired during the course of the Project's implementation.

C. Municipality may make efforts to recover response costs from responsible parties. Municipality hereby agrees to provide the Department with timely advance written notice of any negotiations, proposed agreements, proposed settlements or legal action by which recovery is sought. Municipality further agrees not to commence such legal action nor enter into any such proposed agreement or settlement without the approval of the Department.

D. If any responsible party payments and/or other responsible party consideration become available to Municipality which were not included in the calculation of State Assistance pursuant to Paragraph VI of this Contract, Municipality shall immediately notify the Department of such availability, the Department shall recalculate the amount of State Assistance. The Department has the option of either reducing the Contract amount if the project is ongoing or requesting reimbursement of the amount owed to the State, for deposit in an appropriate account. The State is entitled to 90% of the amount recovered from the responsible party. If Municipality shall fail to make such repayment within sixty (60) days of notification, the Department may take measures provided for by the law of the State of New York relating to the recovery of unrepaid State Assistance. Municipality agrees that it will immediately notify the Department in writing of its receipt of reimbursement from other sources for any expenditure for which State Assistance may be provided under this Contract.

XI. Liability Protection

Municipality shall be entitled to the liability protections set forth at ECL 56-0509, subject to the terms and conditions stated therein, upon receipt of a satisfactory project completion letter from the Department.

XII. Change of Use

Municipality shall notify the Department at least sixty (60) days in advance of any change of use as defined in ECL 56-0511, which is proposed for the Site. In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Municipality of such determination within forty-five (45) days of receipt of such notice.

XIII. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Work Plan which relies upon one or more institutional and/or engineering controls, or within thirty (30) days after the Department's determination pursuant to Subparagraph II.H. that additional remediation is not needed based upon use restrictions, Municipality shall submit to the Department for approval an Environmental Easement in a form provided by regulation of the Department to run with the land in favor of the State, along with a current title report prepared by a title company licensed to do business in New York State, title insurance, an adequate legal description of the Site and a current survey bearing the seal and signature of a licensed land surveyor. The Municipality's submittal shall satisfy the statutory and regulatory requirements of law as set forth in ECL Article 71, Title 36 and 6 NYCRR Part 375. Within thirty (30) days after the Department approves the Municipality's proposed environmental easement, Municipality shall cause such instrument to be recorded with the recording officer for the county in which the Site is located. Municipality shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording.

B. Municipality or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Contract at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer. The Department will not unreasonably withhold its consent.

C. In the event that engineering and/or institutional controls are components of the remedy selected in the Department's Record of Decision pertaining to the Site, Municipality will cause the development of a plan and submission to the Department for its review and approval to ensure that such controls are continually maintained in the manner satisfactory to the Department. Municipality and its successors in title, lessees and lenders are prohibited from challenging the imposition or continuance of such controls, and failure to implement the Department-approved plan or to maintain such controls constitute a violation of this Contract and for the duration of such failure, ECL 56-0509.1 shall have no force and effect.

XIV. Site Lease/Transfer Conditions

Municipality shall not enter into any lease or transfer title to, the Site or any portion of it until Municipality binds itself and its lessees and its successors in title, to the following conditions: that

1. the Site will not be used for any purpose until it is remediated, except that the Site may continue to be used for the purpose for which it is being used as of the start of the term of this Contract if the Department determines that the existing state of contamination is such as not to prohibit such use from continuing, giving due regard for human health and environmental protection;

2. if, before the Site's remediation is completed to the Department's satisfaction,

i. Municipality wishes to subdivide the Site into separate parcels, it may do so after having submitted a document approved by the Department in form and substance for State Assistance to remediate the Site. However, a contaminated parcel of the subdivided Site

cannot be used until the Department-determined remedial objectives for that parcel are met to the Department's satisfaction within such time period as the Department may require.

ii. Municipality's successor in title that itself is not a municipality wishes to subdivide the Site into separate parcels, that successor in title must first agree to remediate all such parcels under Department oversight in accordance with the Department's Record of Decision and any such parcel cannot be used until such successor in title meets the parcel's Department-determined remedial objectives to the Department's satisfaction within such time period as the Department may require; and

iii the Site will not be used for any purpose requiring a level of residual contamination lower than that serving as the basis for the remediation identified in the Department's Record of Decision pertaining to the Site.

XV. Communications

A. All written communications required by this Contract shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Municipality shall be sent to:

Lawrence J. Alden, P.E.
Note: three copies (one unbound) of work plans are required to be sent.

Michael J. Komoroske, P.E.
Correspondence Only

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216
Note: two copies of work plans are required to be sent, and

Mary von Wergers
Correspondence only

2. Communication from the Department to Municipality shall be sent to:

Michael J. Palmer, P.E.
City Engineer
City of Amsterdam, City Hall
61 Church Street
Amsterdam, NY 12010

B. The Department and Municipality reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this Paragraph.

XVI. Termination of Contract

A. If Municipality complies with the requirements of applicable State and federal laws and regulations and with the terms of this Contract, the Department shall issue a Satisfactory Completion of Project letter. This Contract shall terminate when the Department issues this letter, and the parties agree that, upon termination, Municipality, successor in title, lessees and lender shall be entitled to the liability limitation benefits set forth at ECL 56-0509, subject to the terms and conditions stated therein.

B. Without prejudice or waiver of any other rights the State has - if Municipality fails to comply with any of the requirements of applicable State or federal laws and regulations or with any of the requirements of this Contract or if without good cause as determined by the Department, Municipality has:

(1) failed to proceed with the Project as scheduled and/or approved, or

(2) changed the Project or any portion thereof without the Department's prior written approval,

the Department shall provide written notification to Municipality of its breach of contract, setting forth in writing the basis for termination of the Contract and allowing Municipality a reasonable and specific amount of time within which to cure its breach. Payments under this Contract shall be suspended until Municipality has cured its breach. If Municipality does not cure its breach of contract within the period of time allowed by the Department, this Contract shall terminate on the 5th day after Municipality's receipt of another letter from the Department notifying Municipality that the time to cure its breach of contract has passed ("Termination Letter"). The Department shall notify the Municipality of the amount of money that the Municipality owes the State for repayment of State Assistance provided under this Contract and for the Department's oversight costs and for any other costs incurred by the State in administering and terminating Municipality's environmental restoration project ("Demand Letter"). Municipality agrees that if this Contract is terminated by the Department under this Subparagraph B:

(I) Municipality, a successor in title, lessee and lender are not entitled to claim any liability limitation benefits provided under ECL 56-0509 because the Municipality has failed to satisfy the requirement of ECL 56-0509 (1)(a)(I) to comply with all of the terms and conditions of the contract providing State Assistance under ECL Article 56,

(ii) the Department shall withhold all further State Assistance under this Contract, and

(iii) Municipality shall make repayment of any State Assistance already paid under this Contract and other State costs, with interest thereon as provided by law, within 45 days of Municipality's receipt of the Department's Demand Letter.

C. If this Contract is terminated, the following Paragraphs and Subparagraphs shall survive such termination: II(I), III, IV, V, VI, VII, VIII, X, XII, XIII, XIV, XV, and XVII(A).

XVII. Miscellaneous

A. If the information provided and any certifications made by Municipality are not materially accurate and complete, this Contract, except with respect to Municipality's obligations according to the provisions of the Paragraphs that the parties have expressly agreed will survive termination of this Contract, shall be null and void *ab initio* fifteen (15) days after the Department's notification of such inaccuracy or incompleteness, unless Municipality submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Contract is rendered null and void, any Satisfactory Completion Letter that may have been issued under this Contract shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

B. Municipality shall allow the Department to attend, and shall notify the Department at least seven (7) days in advance of, any field activities to be conducted pursuant to this Contract, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; nothing in this Contract shall be construed to require Municipality to allow the Department to attend portions of meetings where privileged matters are discussed.

C. Municipality shall register all known petroleum storage tanks on the Site pursuant to 6 NYCRR 612.2, register all known chemical storage tanks on the Site pursuant to 6 NYCRR 596.2, and properly close all such known tanks, if out-of-service, pursuant to 6 NYCRR 613.9 (in the case of petroleum storage tanks) or 6 NYCRR 598.10 (in the case of chemical storage tanks) within the approved FI/RAA Work Plan schedule.

D. Municipality shall remove and properly dispose of hazardous substance found to be stored on the Site in containment vessels other than known storage tanks (such as drums, transformers, sumps, and pits), or where petroleum storage tanks or chemical storage tanks are discovered on the Site during the course of the Project and such tanks contain hazardous substance, in accordance with all applicable State and federal requirements.

E. The Department may exempt the Municipality from the requirement to obtain any State or local permit or other authorization for any activity conducted pursuant to this Contract that (I) is conducted on the Site or on different premises that are under common control or contiguous to or physically connected with the Site and such activity manages exclusively hazardous waste and/or petroleum from such Site, and (ii) satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit, as determined by the Department.

F. Municipality shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Municipality's obligations under this Contract, If, despite Municipality's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Contract are not obtained, Municipality shall promptly notify the Department, and include a summary of the steps taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Municipality in obtaining

access. If an interest in Site is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Municipality to modify the Work Plan pursuant to Subparagraph II.C of this Contract to reflect changes necessitated by the lack of access and/or approvals.

G. Municipality shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Contract.

H. Municipality shall provide a copy of this Contract to each subcontractor hired to perform work required by this Contract and shall condition all contracts entered into to carry out the obligations identified in this Contract upon performance in conformity with the terms of this Contract. Municipality shall provide written notice of this Contract to all subcontractors hired to perform any portion of the work required by this Contract. Municipality shall nonetheless be responsible for ensuring that Municipality's subcontractors perform the work in satisfaction of the requirements of this Contract. Municipality shall also insert in its contract with its consultant for the Project the clause for conflict of interest found in Appendix B.

I. Municipality shall, before the start of any Approved Activity, require each consultant and subcontractor to secure and deliver to Municipality a policy (or policies) of insurance issued by an insurance company licensed to do business in the State and acceptable to the State that shall name Municipality and the State as additional insured. See Division of Environmental Remediation TAGM 4005, as may be amended, for descriptions of types of insurance required and their minimum limits. Municipality shall provide the Department with a copy of the applicable certificate(s) of insurance for its review prior to the commencement of the Project. Municipality shall provide copies of the applicable insurance policies to the Department upon request.

J. The paragraph headings set forth in this Contract are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Contract.

K. 1. The terms of this Contract shall constitute the complete and entire Contract between the Department and Municipality concerning the implementation of the activities required by this Contract. No term, condition, understanding, or agreement purporting to modify or vary any term of this Contract shall be binding unless made in writing and subscribed by both parties and approved by the State Comptroller. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Municipality of Municipality's obligation to obtain such formal approvals as may be required by this Contract. In the event of a conflict between the terms of this Contract and any Work Plan submitted pursuant to this Contract, the terms of this Contract shall control over the terms of the Work Plan(s) attached as Schedule "A" Municipality consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Contract.

2. I. Except as set forth herein, if Municipality desires that any provision of this Contract be changed, other than a provision of a Work Plan or a time frame, Municipality shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XV.A.1.

ii. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Contract.

iii. Changes to a time frame set forth in this Contract shall be accomplished by a written request to the Department's project attorney and project manager, which request shall not be unreasonably denied.

L Unless otherwise expressly provided herein, terms used in this Contract which are defined in ECL Article 56 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

M. Municipality's obligations under this Contract represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

N. All work performed in relation to the Project by Municipality or its agents, representatives, or contractors shall conform to all applicable federal, State and local laws, ordinances, rules and regulations, and standards, including permit requirements. This Contract does not constitute a permit and does not confer upon the applicant the right to engage in the Contemplated Use or any other use of the Site for any particular purpose.

O. Municipality shall ensure that any identifying signs will note that portions of the Project were assisted by the State under the Clean Water / Clean Air Bond Act of 1996.

P. All approved work plans, final reports shall be submitted to the Department in an electronic format acceptable to the Department within thirty (30) days of approval of such final report. In addition, the Department may require other site related documents to be submitted electronically. If any document cannot be converted into electronic format, Municipality shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

Q. No delay or omission on the part of either party in exercising any right under this Contract shall operate as a waiver of such right or of any other right under this Contract. A waiver on any occasion shall not be construed as a bar to or a waiver of any right and/or remedy on any other occasion. No waiver or consent shall be binding unless it is in writing and executed by the Department and Municipality.

R. Appendix A - "Standard Clauses for All New York State Contracts"; Appendix B - "Standard Clauses for All New York State Department of Environmental Conservation Contracts"; Rider to Appendix B - " Standard Clauses for All New York State Department of Environmental Conservation Contracts for Environmental Restoration Projects"; Appendix C - "Legal Description of Site"; Schedule A - Work Plan (Investigation)and/or Schedule A - Work Plan (Remediation); Schedule B - "Payment Schedules"; and the "Glossary" are attached to and hereby made a part of this Contract as if set forth fully herein.

S. In the case of an application for State Assistance for an environmental restoration remediation project, Municipality shall submit evidence of its compliance with the requirements of the State Environmental Quality Review Act ("SEQR").

T. This Contract may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

U. The term of this Contract shall start January 29, 2004. This Contract shall end on December 31, 2005. This Contract will be effective upon approval and filing by the State Comptroller in accordance with Section 112 of the State Finance Law. Municipality agrees to proceed expeditiously with and to complete the Project in accordance with Work Plans approved by the Department, and any revisions thereto, and to carry out its other obligations under this Contract.

CONTRACT NUMBER C302571

In witness whereof, the parties have signed this Contract on the date indicated opposite each signature. The signatory for the Department provides the following Agency Certification: "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

FOR MUNICIPALITY

State of NY)
) ss:
County of Montgomery)

By: Joseph Emanuele III
Title: MAYOR
Date: 9/03/04

On this 3rd day of September, 2004, before me, the undersigned, personally appeared Joseph Emanuele III (name) or (names) personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ties), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

JANE DiCAPRIO
Notary Public for New York
Montgomery County Reg. #01DI5019067
Comm. Expires Oct. 25, 2005

By: Jane DiCaprio
Signature and office of the individual taking acknowledgment

Date: _____

FOR DEPARTMENT

By: _____
Title: DIRECTOR OF MANAGEMENT & BUDGET
Date: 11/4/04

Approved as to form
By: _____
for the Attorney General
Date: _____

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
NOV 15 2004
ASSOCIATE ATTORNEY

Approved:
By: _____
For the State Comptroller
Date: _____

APPROVED
DEPT. OF AUDIT & CONTROL
NOV 26 2004
FOR THE STATE COMPTROLLER

The contract is not effective until it is approved by the State Comptroller and filed in his office (Section 112, State Finance Law).

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $30,000 (State Finance Law Section 163.6.a).

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it not its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
http://www.empire.state.ny.us

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

APPENDIX B

Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. **Postponement, suspension, abandonment or termination by the Department:** The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. **Indemnification and Hold harmless** The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

III. **Conflict of Interest** (a) Organizational Conflict of Interest. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest: The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual, or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict.

The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover

bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. **Requests for Payment** All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

E. **Compliance with Federal requirements** To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. **Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. **Article 15-A Requirements** The terms contained in this clause shall have the definitions as given in, and shall be construed according to the intent of Article 15-A of the Executive Law, 5 NYCRR Part 140, et. seq., Article 52 of the Environmental Conservation Law and 6 NYCRR Part 615, et. seq., as applicable, and any goals established by this clause are subject to the intent of such laws and regulations.

(a) If the maximum contract price herein equals or exceeds $25,000, and this contract is for labor, services, supplies, equipment, or materials; or

(b) If the maximum contract price herein equals or exceeds $100,000 and this contract is for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; then

(c) The affirmative action provisions and equal employment opportunity provisions contained in this paragraph and paragraphs (d) and (e) of this clause shall be applicable within the limitations established by Executive Law §§312 and 313 and the applicable regulations.

(1) The Contractor is required to make good faith efforts to subcontract at least 6% of the dollar value of this contract to Minority Owned Business Enterprises (MBEs) and at least 6% of such value to Women Owned Business Enterprises (WBEs).

(2) The Contractor is required to make good faith efforts to employ or contractually require any Subcontractor with whom it contracts to make good faith efforts to employ minority group members for at least 10% of, and women for at least 10% of, the workforce hours required to perform the work under this contract.

(3) The Contractor is required to make good faith efforts to solicit the meaningful participation by enterprises identified in the NYS Directory of Certified Businesses provided by:

Empire State Development Corp.
Div. Minority & Women's Business Development
30 South Pearl Street
Albany, New York 12245
Phone: (518) 292-5250
Fax: (518) 292-5803
and
Empire State Development Corp.
633 Third Avenue
New York, NY 10017
Phone: (212) 803-2414
Fax: (212) 803-3223
internet: www.empire.state.ny.us\esd.htm

(d) The Contractor agrees to include the provisions set forth in paragraphs (a), (b) and (c) above and paragraphs (a), (b), and (c) of clause 12 of Appendix A in every subcontract in such a manner that the provisions will be binding upon each Subcontractor as to work under such subcontract. For the purpose of this paragraph, a "subcontract" shall mean an agreement providing for a total expenditure in excess of $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon in which a portion of the Contractor's obligation under a State contract is undertaken or assumed.

(e) The Contractor is required to make good faith efforts to utilize the MBE/WBEs identified in the utilization plan to the extent indicated in such plan, and otherwise to implement it according to its terms. The Contractor is requested to report on such implementation periodically as provided by the contract, or annually, whichever is more frequent.

VIII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

IX. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final agency determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI , will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or

(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or

(3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final agency decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Edward Belmore, P.E.
Director, Remedial Bureau D
625 Broadway
Albany, NY 12233-7013
(518) 402-9814

The designated appeal individual to review decisions is:

Sal Ervolina, Assistant Director
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7011
(518) 402-9707

The Chair of the Contract Review Committee is:

Nancy W. Lussier, Chair
Contract Review Committee
625 Broadway, 10th Floor
Albany, NY 12233-5010
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final agency determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final agency determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) (1) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(2) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

X. **Labor Law Provisions**

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

XI. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XII. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XIII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIV. **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XV. **Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XVI. **Patent and Copyright Protection**
If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.
(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

(I) prompt written notice of any action, claim or threat of infringement suit, or other suit, and

(2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and

(3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.

The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

(I) procure for the Department the right to continue using the same item or parts thereof;

(2) modify the same so that it becomes non-infringing and of at least the same quality and performance;

(3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;

(4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in

such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

XVII. **Force Majeure** The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

XVIII. **Freedom of Information Requests** The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release and to support its position.

XIX. **Precedence** In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

C302571

Rider to
Appendix B
Standard Clauses for All
New York State Department of
Environmental Conservation
Contracts

FOR ENVIRONMENTAL RESTORATION PROJECTS

The parties to this contract hereby agree that clause II of this appendix B is hereby revised to read as follows:

II. The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments, of every nature and, description brought or recovered against it by reason of any acts or omissions of the Contractor, its agents, employees, or subcontractors in the performance of this contract which are shown to have been the result of negligence, gross negligence or reckless, wanton or intentional misconduct; except that the Contractor shall not be obligated to so indemnify and save harmless with respect to those matters described in ECL 56-0509.1 during those periods in which the protection afforded under ECL 56-0509.1 is in effect.

Department of Environmental Conservation

Dated: By: _____
Director of Fiscal Management

City of Amsterdam

Dated: 9/03/04 By: _____
Municipal Representative

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
NOV 15 2004
PETER FAVRETTO
ASSOCIATE ATTORNEY

APPENDIX "C"

Legal Description of Site

CORRECTIVE
WARRANTY DEED

441 034

THIS INDENTURE made as of the 6th day of January , 1984 ,

BETWEEN: MOHASCO CORPORATION, a New York Corporation having its principal place of business at 57 Lyon Street, Amsterdam, New York,

Party of the first part,

and

KALMAN AMSTERDAM, a California General Partnership, having an office at 3132 Laguna Street, San Francisco, California, 94132

Party of the second part,

WITNESSETH; that the party of the first part, in consideration of the sum of
-------One and 00/100---------- Dollars ($1.00--------)
lawful money of the United States, and other good and valuable consideration, paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever, all

THOSE PIECES OR PARCELS OF LAND situate, lying and being in the City of Amsterdam, County of Montgomery and State of New York, more particularly described as follows:

PARCEL #1: BEGINNING at the intersection of the westerly margin of Forest Avenue and the southerly margin of Lyon Street; thence along the westerly margin of Forest Avenue the following two courses:
S19°-18'-45"W 81.23 feet
S23°-48'-10"W 440.22 feet
to a point marking the most northeasterly corner of lands of Forest Avenue Joint Venture; thence along lands of Forest Avenue Joint Venture the following six courses:
N66°-13'-35"W 125.53 feet
N58°-27'-30"W 84.72 feet
N66°-11'-30"W 76.00 feet
S53°-35'-00"W 33.16 feet
S23°-49'-50"W 90.71 feet
S66°-06'-05"E 301.70 feet to a point in the westerly margin of Forest Avenue, which point is the most southeasterly corner of lands of Forest Avenue Joint Venture; thence S23°-57'-30"W 31.61 feet along the westerly margin of Forest Avenue to an iron pipe marking the northeasterly corner of lands of Thomas B. Constantino; thence along lands of Thomas B. Constantino the following 16 courses:
N66°-02'-50"W 296.06 feet
N 8°-08'-35"E 5.83 feet
N60°-50'-30"W 51.01 feet
N38°-48'-55"E 47.32 feet
S51°-11'-05"E 1.62 feet
N38°-48'-55"E 57.00 feet
N51°-11'-05"W 28.02 feet
S73°-30'-55"W 111.48 feet
S38°-48'-55"W 111.21 feet
S75°-50'-25"W 145.75 feet
S 7°-16'-20"E 114.43 feet
S38°-48'-55"W 61.45 feet
S51°-11'-05"E 82.25 feet
S38°-35'-40"W 188.25 feet
S46°-00'-00"W 206.44 feet
S36°-48'-20"W 279.78 feet to an iron pipe; thence N51°-48'-50"W 65.65 feet along the extension of the northerly margin of Elias Street to an iron pipe marking the most southeasterly corner of lands of Mazur; thence N38°-31'-45"E 210.35 feet along lands of Mazur and the extension thereof to an iron pipe; thence N51°-48'-50"W 260.25 feet crossing the end of Krull Street to an iron pipe set in the westerly margin of Krull Street and marking the most southeasterly corner of Petrosino; thence

N38°-31'-45"E 30.00 feet along the extension of the westerly margin of Krull Street to an iron pipe marking the most Northeasterly corner of Petrosino thence N50°-15'-00"W 81.77 feet along the northerly line of lands of Petrosino to an iron pipe marking the most northwesterly corner of Petrosino; thence N39°-39'-40"E 130.00 feet along the easterly line of lands of Caldarone, Ruoco and Tolson to an iron pipe marking the most northeasterly corner of lands of Tolson; thence N51°-59'-10"W 53.00 feet along the northerly line of lands of Tolson to an iron pipe marking the most southeasterly corner of lands of Husted; thence N38°-00'-50"E 95.50 feet along the easterly line of lands of Husted, Tenison and Cetnar to an iron pipe marking the most northeasterly corner of lands of Cetnar; thence N51°-59'-10"W 100.00 feet along the northerly line of lands of Cetnar to a point which is the northwesterly corner of lands of Cetnar; thence along the easterly margin of Locust Avenue the following two courses:

N38°-05'-30"E 478.72 feet
N43°-29'-00"E 8.23 feet to a point in the southerly margin

of Lyon Street; thence along the southerly margin of Lyon Street the following eight courses:

N61°-44'-15"E 10.82 feet
N71°-39'-50"E 105.38 feet
N72°-49'-35"E 350.45 feet
N74°-41'-00"E 146.58 feet
N88°-22'-30"E 89.17 feet
S77°-23'-30"E 184.62 feet
S81°-30'-25"E 119.02 feet
S78°-08'-45"E 87.35 feet to the point or place of beginning.

CONTAINING 17.18 acres of land more or less. All bearings are magnetic for the year 1977.

PARCEL #2: BEGINNING at an iron pipe set in the northerly margin of Lyon Street and marking the most southwesterly corner of lands of Stevens; thence S73°-56'-45"W 90.25 feet to a point on a concrete retaining wall; thence N25°-36'-15"W 90.90 feet along the retaining wall and the extension thereof and along the easterly line of lands of Rocco to an iron pipe; thence N73°-23'-45"E 20.50 feet along the southerly line of lands of Merendo to an iron pipe; thence S15°-36'-15"E 33.58 feet along the westerl line of lands of Orapello to an iron pipe; thence N66°-11'-15"E 84.42 feet along the southerly line of lands of Orapello and Ticen to an iron pipe; thence S17°-16'-50"E 67.67 feet along the westerly line of lands of Stevens to the point or place of beginning. CONTAINING 0.15 acres of land more or less. All bearings are magnetic for the year 1977.

PARCEL #3: BEGINNING at an iron pipe set in the northerly margin of Lyon Street and marking the most southeasterly corner of lands of Candello; thence N8°-41'-50"E 109.00 feet along the easterly line of lands of Candel to a point; thence S84°-48'-05"E 344.99 feet to an iron pipe marking the most southwesterly corner of lands of Fyfe; thence along the southerly lin of lands of Fyfe the following three courses:

N78°-14'-20"E 37.50 feet to an iron pipe
S51°-45'-40"E 2.50 feet to an iron pipe
N78°-14'-20"E 25.00 feet to an iron pipe

marking the most northwesterly corner of lands of Saul; thence S17°-26'-20"E 133.09 feet along the westerly line of lands of Saul and Centi to an iron pipe set in the northerly margin of Lyon Street; thence along the northerly margin of Lyon Street the following three courses:

S70°-13'-10"W 47.35 feet
N84°-20'-10"W 177.33 feet
N81°-07'-10"W 245.00 feet to the point or place of beginning.

CONTAINING 1.23 acres of land more or less. All bearings are magnetic for the year 1977.

PARCEL #4 BEGINNING at a point which is the intersection of the westerly margin of Forest Avenue with the northerly bank of the Chuctanunda Creek; thence N23°-49'-10"E 20.98 feet along the westerly margin of Forest Avenue to a lag bolt set in blacktop; thence S89°-34'-05"E 169.40 feet along the southerly line of the Gas Station Parcel to an iron pipe set in blacktop; thence N19°-14'-15"W 59.67 feet along the easterly line of the Gas Station Parcel to an iron pipe set in blacktop in the southerly margin of Lyon Street; thence along the southerly margin of Lyon Street the following

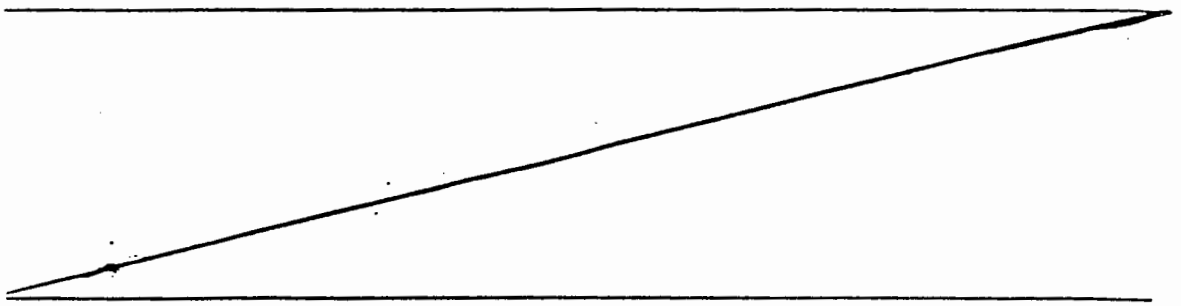
ourses:
S35°-27'-50"E 31.67 feet
N70°-13'-10"E 175.00 feet
N65°-11'-20"E 340.74 feet to the northerly bank of the huctanunda Creek; thence along the northerly bank of the Chuctanunda reek the following courses:
S62°-51'-40"W 43.93 feet
S44°-01'-20"W 80.35 feet
S51°-48'-45"W 42.00 feet
S28°-16'-45"W 30.91 feet
S34°-20'-40"W 164.75 feet
S49°-01'-10"W 70.00 feet
S60°-11'-55"W 125.00 feet
N78°-21'-30"W 110.00 feet
N63°-37'-40"W 177.65 feet
o the point or place of beginning. CONTAINING 1.61 acres of land more r less. All bearings are magnetic for the year 1977.

ARCEL #5: BEGINNING at a point which is the intersection of the westerly argin of Forest Avenue with the northerly margin of Lakeview Place; thence 23°-49'-10"E 73.80 feet along the westerly margin of said Forest Avenue to point on the southerly bank of the Chuctanunda Creek; thence along the outherly bank of the Chuctanunda Creek the following courses:
S64°-10'-55"E 225.61 feet
S71°-32'-40"E 56.76 feet
S81°-36'-00"E 69.06 feet
N64°-20'-15"E 50.67 feet to a point; thence S38°-04'-00"W 9.72 feet to a point in the northerly margin of Lakeview Place; thence long the northerly margin of Lakeview Place the following courses:
N54°-56'-10"W 53.32 feet
N74°-00'-20"W 307.50 feet to the point or place of beginning. ONTAINING 0.42 acres of land more or less. All bearings are magnetic for ne year 1977.

ith respect to any of the above-described lands that lie under the huctanunda Creek, the party of the first part conveys its interest nly to such lands

UBJECT to all covenants, conditions and easements of record.

he property herein described does not constitute all or substantially ll of the assets of Mohasco Corporation.



)GETHER with the appurtenances and all the estate and rights of the irty of the first part, in and to said premises.

) HAVE AND TO HOLD the premises herein granted unto the party of the econd part, the heirs or successors and assigns of the party of the econd part forever.

ND the party of the first part covenants as follows;

IRST that the party of the second part shall quietly enjoy the said remises;

ECOND, that the party of the first part will forever WARRANT the title) said premises; and

HIRD, that the party of the first part, in compliance with Section 13 of ne Lien Law, covenants that the party of the first part will receive the onsideration for this conveyance and will hold the right to receive such

consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

This is a CORRECTIVE DEED given solely for the purpose of correcting (a) the direction of the 25th course of Parcel #1; (b) the distance of the second course of Parcel #2; and (c) the direction of the second course of Parcel #3. CONSIDERATION FOR THIS CONVEYANCE IS LESS THAN $100.00.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed as of the day and year first above written.

MOHASCO CORPORATION

By: Albert F. Smith
Albert F. Smith
Treasurer

(Corp. Seal)

Attest:
William T. Brazell,
Secretary

STATE OF NEW YORK :

COUNTY OF MONTGOMERY : ss.:

On March 6, 1984, before me personally came Albert F. Smith, to me known, and who, being by me duly sworn, did depose and say that deponent resides at Upper Steadwell Road, Amsterdam, New York, deponent is Treasurer of Mohasco Corporation, the corporation described in and which executed the foregoing instrument; deponent knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; deponent signed deponent's name thereto by like order.

Sheila P. Bligh
Notary Public - State of New York
My Commission Expires 3/30/85

$20

RECORD AND RETURN TO:

KALMAN AMSTERDAM
3132 Laguna Street
San Francisco, CA 94123

RECEIVED
$ Exempt
REAL ESTATE
MAR 7 - 1984
TRANSFER TAX
MONTGOMERY
COUNTY

STATE OF NEW YORK)
MONTGOMERY COUNTY) SS

Recorded on the 7th. day of March 19 84 at 10:08 o'clock A M. In Book 441 of Deeds at page 34 and examined.

Christine M. Berger
CLERK

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

I, Robert N. Going, being an attorney duly admitted to the practice of law in the State of New York, affirm under the penalties of perjury the following:

1. That I am an attorney for the City of Amsterdam, the Municipality which is the applicant for State Assistance pursuant to Title 5 of Article 56 of the Environmental Conservation Law to undertake an Environmental Restoration Project known as the "Mohasco Complex" Project;
2. That the property located at the corner of Forest Avenue and Lyon Street, Amsterdam, New York 12010, County of Montgomery, which is the subject of the Project, is more particularly described in the attached deed;
3. That I hereby certify to the Commissioner of Environmental Conservation that I have examined or caused to be examined the title of the Property, and that I have approved the same, and that as of the date of this affirmation a good and marketable title thereto in fee is vested in and may be conveyed by the City of Amsterdam.

4. That annexed hereto is a certified copy of the deed whereby such title to the Property was conveyed to the City of Amsterdam, and that I hereby certified to the Commissioner of Environmental Conservation that the property title to which is conveyed by said deed is identical to the Property which is subject of the Project; and
5. I make this affirmation to be attached as an exhibit and incorporated by reference into such application.

ROBERT N. GOING

THIS INDENTURE, made this 23rd day of December, 1994, between KIM BRUMLEY, CITY OF AMSTERDAM CONTROLLER, 61 Church Street, Amsterdam, New York, party of the first part, and the CITY OF AMSTERDAM, NEW YORK, a municipal corporation located in the County of Montgomery and State of New York, having its principal office at No. 61 Church Street, Amsterdam, New York, party of the second part.

W I T N E S S E T H

WHEREAS, an action entitled "In the Matter of Foreclosure of Tax Liens, pursuant to Article Eleven, Title Three, of the Real Property Tax Law by the City of Amsterdam, New York, List of Delinquent Taxes for 1993", was duly brought by the City of Amsterdam for the foreclosure of certain tax liens, by the due filing of a List of Delinquent Taxes in the Office of the County Clerk of the County of Montgomery, New York, on the 30th day of June, 1994, and due mailing thereof to owners of all property affected and other interested persons, and

WHEREAS, at a Term of said County Court held at the County Courthouse, in the Village of Fonda, New York, on the 10th day of December, 1994, Judgment was duly entered, wherein it was among other things, ordered, adjudged and decreed by the said Court that the party of the first part, as City Controller of the City of Amsterdam, should execute and deliver to the party of the second part, a Deed to the certain parcels and tracts of land hereinafter more specifically described, and

WHEREAS, the said Judgment was duly entered in the Montgomery County Clerk's Office on the 13th day of December, 1994,

NOW, THEREFORE, the party of the first part, by virtue of and in pursuant of the aforesaid Judgment and the statutes in such cases made and provided, and for and in consideration of the sum of One ($1.00) Dollar to her and in hand paid, the receipt whereof is hereby acknowledged and other good and valuable consideration does hereby grant and convey unto the party of the second part, its successors and assigns, a full and complete title in and to:

ALL THOSE TRACTS OR PARCELS OF LAND, situate in the City of Amsterdam, County of Montgomery and State of New York, bounded and described as follows:

DELINQUENT TAXES FOR 1993

WIZMEISTER REALTY CO., SBL #40.13-4-23.12 AND 40.13-4-23.1 and being parcels designated by Serial No. 1 on the list of delinquent taxes for 1992.

TO HAVE AND TO HOLD ALL SINGULAR, the premises above mentioned and described and hereby conveyed, unto the party of the second part, its successors and assigns forever.

New York State Department of Environmental Conservation
1996 Clean Water / Clean Air Bond Act
Environmental Restoration Projects-Title 5

Schedule A: Work Plan (Remediation)

State Assistance Contract #: C302571

Project Name: Mohasco Complex

Site Number: B00052-4

Municipality: City of Amsterdam

County: Montgomery

General Purpose:

The general purpose of this project is to undertake all activities necessary to complete the Project required by this Contract signed between the State of New York and the City of Amsterdam.

General Scope:

The Remedial Design/Remedial Action (RD/RA) will involve all tasks necessary to implement the remedy in accordance with the Department's Record of Decision. Specific tasks include: pre-design activities, as necessary, to address any uncertainties from the RI/AAR; preparation of a remedial design report; development of the statement of work, plans and specifications; contractor procurement; project scheduling; acquisition of appropriate bonding and insurance; acquisition of required permits; implementation of the remedial program; establishment of an operation and maintenance program, as required; submittal of a construction completion report and as-built drawings; and public participation.

Upon approval of a project-specific work plan and schedule by the NYSDEC, it will be attached to and made part of this contract.

Eligible Cost estimates:

The Project's estimated Total Eligible Cost is $2,340,000.00. This figure is a reasonable estimate based upon existing knowledge of the Site and the cost estimate provided by Municipality, resulting in a SAC amount of $1,626,000.00.

Estimated Total Eligible Cost:	$2,340,000.00
Estimated Grant	$1,626,000.00

Estimated progress schedule: 16 months

New York State Department of Environmental Conservation
1996 Clean Water / Clean Air Bond Act
Environmental Restoration Projects-Title 5

Schedule B: Payment Schedules

State Assistance Contract #: C302571

Project Name: Mohasco Complex

Site Number: B-00052-4

Municipality: City of Amsterdam

County: Montgomery

Requests for payment shall be submitted no more frequently than on a quarterly basis (every three months).

GLOSSARY

Except as expressly provided herein, terms used in this Contract have the same meanings as those set forth in ECL Article 56. In addition, the following terms shall have the meanings set forth below:

(i) "Alternatives Analysis Report" is a report that contains an evaluation of options for the remediation of any contamination in, on, or under, or emanating from, the Site that includes an analysis of data and other information concerning the nature and extent of the Site's contamination and is generally performed concurrently, and in an interactive fashion, with the site investigation. An Alternatives Analysis Report is the Final Report submitted by a Municipality at the end of an environmental restoration investigation project.

(ii) "Approved Activity" means any Investigation or Remediation activity which is part of the Project and has been approved in writing by the Department.

(iii) "Contractor" in Appendices A and B means Municipality.

(iv) "Disposition of the Site" means the leasing of the Site or the transfer of the Site's title through sale or other means.

(v) "Eligible Cost" shall have the meaning given to that term in the most recent version of the Department's "Procedures Handbook for Environmental Restoration Projects" available at the time of this Contract.

(vi) "Environmental Easement" shall mean an interest in real Site, created under and subject to the provisions of ECL Article 71, Title 36, which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls."

(vii) "Force Majeure Event" is an event, in accordance with applicable case law, that includes but is not limited to war, strike, judicial injunction, or any other fact or circumstance beyond the Municipality's reasonable control.

(viii) "Investigation" means a project consisting of a process undertaken to determine the nature and extent of contamination in, on, and under, and emanating from, the Site. The Site investigation includes the gathering of sufficient information to determine the necessity for, and the selection of the appropriate method of, remediation of contamination in, on, or under, or emanating from the Site. Additionally, it includes the associated Alternatives Analysis Report and any assistance Municipality must provide to the Department in the Department's selection of the Site's remedy. The term also includes any Department-approved interim remedial measures needed to undertake the Project or needed to eliminate any potential or actual releases of hazardous substances at, or from, the Site.

(ix) "Municipal Share" means any money provided under this Contract by Municipality for its share of the Contract. Municipality may use any funding available (i.e. federal, State or other private party monies) except responsible party funding towards its share.

(x) "Parties" means the Department and Municipality.

(xi) "Project" means the Site's Investigation and/or Remediation as described in the Work Plan(s).

(xii) "Remediation" means a Project consisting of the design and implementation of the remedy selected in the Department's record of decision. While implementing the remedy may require continued operation, monitoring, and maintenance of the remedy, the cost of these on-Site activities would not be eligible for reimbursement under this contract.

(xiii) "Site" means real Site which is the subject of the Project, the Tax Map identification number for which is as follows: SBL 40.13-7-2. The Site's legal description appears as Appendix "C" to this Contract.

(xiv) "State Assistance" means State money provided under this Contract to Municipality pursuant to Article 56, Title 5 of the ECL.

(xv) "Work Plan" means a document which describes the purpose, scope, estimated cost, and progress schedule of the Project. The Work Plan must include a public participation plan that, at a minimum, satisfies the requirements of ECL 56-0503.2.

RECEIVED

CITY OF AMSTERDAM, NEW YORK
COMMON COUNCIL MEETING
October 19, 2004

RESOLUTION #04/05-78

RESOLUTION AUTHORIZING MAYOR TO SEEK AID FOR MOHASCO SITE

BY: MAYOR EMANUELE & ENTIRE COMMON COUNCIL
Motion by Alderman Wills

WHEREAS the City of Amsterdam, hereinafter called the "municipality", after thorough consideration of the various aspects of the problem and study of available data, has hereby determined that certain work , as described in its application and attachments, herein called the "Project", is desirable, is in the public interest, and is required in order to implement the Project; and

WHEREAS, Article 56 of the Environmental Conservation Law authorizes State assistance to municipalities for environmental restoration projects by means of a contract and the Municipality deems it to be in the public interest and benefit under this law to enter into a contract therewith; now therefore be it

RESOLVED by the City of Amsterdam that

1. The Mayor is the representative authorized to act in behalf of the Municipality in all matters related to State assistance under ECL Article 56, Title 5. The representative is also authorized to make application, Execute the State Assistance Contract, submit Project documentation, and otherwise act for the Municipality's governing body in all matters related to the Project and State assistance;
2. That the Municipality agrees that it will fund its portion of the cost of the Project and that funds will be available to initiate the Project's field work within twelve (12) months of written approval of its application by the Department of Environmental Conservation;
3. That one (1) certified copy of this authorization be prepared and sent to the Albany Office of the New York State Department of Environmental Conservation together with the application for State assistance;
4. That this authorization take effect immediately.

COMMON COUNCIL
CITY OF AMSTERDAM, N.Y

MAYOR EMANUELE	AYE	NO
ALD GAVRY	✓	
ALD PALLOTTA	✓	
ALD McDERMOTT	✓	
ALD WILLS	✓	
ALD MARTUSCELLO	✓	

Motion carried

Joseph Emanuele III
JOSEPH EMANUELE III, MAYOR

Dated: Oct. 22, 2004

CERTIFICATION OF TRANSCRIPT

STATE OF NEW YORK
AMSTERDAM CITY CLERK'S OFFICE

I, Jane DiCaprio, City Clerk and Clerk of the Common Council of the City of Amsterdam, do hereby certify that I have compared the foregoing copy of RESOLUTION #04/05-78 RESOLUTION AUTHORIZING MAYOR TO SEEK AID FOR MOHASCO SITE with the original thereof On file in the City Clerk's Office, 61 Church Street, Amsterdam, New York 12010 and that the same is a correct transcript therefrom and of the whole of such original Resolution #04/05-78

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City, at Amsterdam this 21 st. day of Oct. A.D. 2004

Jane DiCaprio
CITY CLERK