

# Appendix A

State Assistance Contract (SAC) with Metes and Bounds



**STATE ASSISTANCE CONTRACT NO. C303218**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

RECEIVED

IN RE:

JAN 29 2007

Municipality Name: City of Buffalo and Erie County  
Site Name: Hanna Furnace Sub-Parcel 3  
Site Address: 4 Fuhrmann Boulevard  
Buffalo, New York 14203  
Site Number: B00164

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Contract Number: C303218

This CONTRACT is made between the New York State Department of Environmental Conservation ("Department"), acting for and on behalf of the State, and the City of Buffalo, with offices located at 65 Niagara Square, Buffalo, New York 14202, jointly with Erie County, with offices located at Edward A. Rath County Office Building, 95 Franklin Street, Buffalo, New York 14202, hereinafter collectively referred to as the "Municipality."

**WHEREAS**, the Department 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; 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 Program projects approved by the Department for eligible properties held in title by them; and

**WHEREAS**, Municipality has applied for State Assistance to develop and implement an Environmental Restoration Program project (Project), the purpose and scope of which is set forth in Schedule A (Scope of Work) 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; 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 (Plan) for this Project in accordance with its terms, a copy of which plan is set forth in the work plan and incorporated into this Contract. The Plan must provide that if the Municipality elects not to proceed with remediation of the Site, the 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"

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 10<sup>th</sup> 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 to conduct an Environmental Restoration Program 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 Program remediation project, as defined in the most recent version of the Department's Procedures Handbook for Environmental Restoration Program 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 shall be incorporated into and become an enforceable part of this Contract

#### 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 1<sup>st</sup> 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

The Municipality represents that the Site will be used for: restricted 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. The 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. The 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. The 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. The Municipality hereby agrees to provide access to the Site and to all relevant information regarding activities that may have involved contaminants 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 Site Management 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 the 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 the Municipality for its Eligible Costs in conducting the Project in an amount not to exceed six million thirty-three thousand eight hundred dollars (\$6,033,800), which amount has been determined by the Commissioner to be up to 90 percent of the estimated Eligible Costs for on-site work and up to 100 percent of the Eligible Costs of any off-site work directed by the Department to be undertaken outside the boundaries of the Site that is 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 final Eligible Costs are lower than those used to calculate the estimated Eligible Costs amount, the parties agree to either amend this State Assistance Contract to apply the same percentage shown above to the final Eligible Costs in order to determine the revised contract amount if the project is ongoing, or to reimburse the Municipality based on the final Eligible Costs and disencumber the unexpended contract amount and close out the contract, if the project is completed. 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 the 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, the 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 the 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 the 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 the difference between the value of the disposition of the Site less the Municipality's cost of the Site including taxes owed to the Municipality upon acquisition and the Municipality's share of the cost of this Project up to the amount reimbursed by the State to the Municipality under this Contract. 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 the 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 the Municipality disposes of the Site by sale to a responsible party, the 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 the Municipality under this Contract plus accrued interest and transaction costs and the Municipality shall pay such funds immediately to the Department for deposit into an appropriate account.

IX. Force Account

The Municipality shall seek prior Department approval of any proposal to use the 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 the Municipality can demonstrate that the 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 the Municipality's employees. The cost of any work performed by the 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 the Municipality's employees for a specified task or activity, the 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 the 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 contaminants located at the Site and did not own the Site before the Municipality acquired title to the Site.

B. The 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. The Municipality may make efforts to recover response costs from responsible parties. The 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. The 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 the Municipality which were not included in the calculation of State Assistance pursuant to Paragraph VI of this Contract, the 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 will calculate the amount owed by the Municipality based on the recalculated State assistance amount and the amount the State has reimbursed the Municipality as of the date the recalculation is made. If the 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. The 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

The 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 Completion of Project letter from the Department.

XII. Change of Use

The 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 the 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, the 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, the Municipality shall cause such instrument to be recorded with the recording officer for the county in which the Site is located. The 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. The 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, the 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. The 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

The Municipality shall not enter into any lease or transfer title to, the Site or any portion of it until the 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. The 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. The 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:

David Locey  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203

Martin Doster  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203  
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

Mary Von Wergers  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-5500  
Correspondence only

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

Byron Brown  
Mayor  
City of Buffalo  
65 Niagara Square  
Buffalo, New York 14202

Joel A. Giambra  
County Executive  
Erie County  
Edward A. Rath County Office Building  
95 Franklin Street  
Buffalo, New York 14202

Sandra Nasca  
City of Buffalo  
Office of Strategic Planning  
920 City Hall  
Buffalo, New York 14202

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 the 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, the 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 the 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, the 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 the Municipality of its breach of contract, setting forth in writing the basis for termination of the Contract and allowing the Municipality a reasonable and specific amount of time within which to cure its breach. Payments under this Contract shall be suspended until the Municipality has cured its breach. If the Municipality does not cure its breach of contract within the period of time allowed by the Department, this Contract shall terminate on the 5<sup>th</sup> day after the Municipality's receipt of another letter from the Department notifying the 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 the Municipality's Environmental Restoration Program project ("Demand Letter"). The Municipality agrees that if this Contract is terminated by the Department under this Subparagraph B:

- i. the 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. the 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 the 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 the Municipality are not materially accurate and complete, this Contract, except with respect to the 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 the 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 of Project 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. The 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 the Municipality to allow the Department to attend portions of meetings where privileged matters are discussed.

C. The 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. The Municipality shall remove and properly dispose of hazardous waste 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 waste, 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 contaminants 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. The 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 the 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, the 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 the 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 the 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. The Municipality shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Contract.

H. The 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. The 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 the Municipality's subcontractors perform the work in satisfaction of the requirements of this Contract. The Municipality shall also insert in its contract with its consultant for the Project the clause for conflict of interest found in Appendix B.

I. The Municipality shall, before the start of any Approved Activity, require each consultant and subcontractor to secure and deliver to the 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 the Municipality and the State as additional insured. See Division of Environmental Remediation guidance, as may be amended, for descriptions of types of insurance required and their minimum limits. The 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. The 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 the 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 the Municipality of the 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). The 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 the Municipality desires that any provision of this Contract be changed, other than a provision of a Work Plan, the Municipality shall make timely written application 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.

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. The 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 the 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. The 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, the 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 the 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 - Scope of Work; 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 Program remediation project, the 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 February 17, 2005. This Contract shall end on March 31, 2008. This Contract will be effective upon approval and filing by the State Comptroller in accordance with Section 112 of the State Finance Law. The 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 C303218

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 CITY OF BUFFALO**

State of New York )  
 ) ss:  
County of ERIE )

By: MAYOR  
Title: Byron W. Brown  
Date: 9/7/06

On this 7th day of September, 2006, before me, the undersigned, personally appeared Byron W. Brown (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(ies), 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.

**MARIE CURRIE**  
Notary Public, State of New York  
No: 01CU4737648  
Qualified in Erie County  
Commission Expires Nov. 30, 2009

By: Marie Currie  
Signature and office of the individual taking acknowledgment

Date: 9/7/06

**FOR DEPARTMENT**

By: Nancy Weiss  
Title: DIRECTOR OF MANAGEMENT & BUDGET SVCS

Date: 12/6/06

Approved as to form:

By: \_\_\_\_\_  
for the Attorney  
Date: \_\_\_\_\_

APPROVED AS TO FORM  
NYS ATTORNEY GENERAL  
DEC 29 2006  
Lorraine A. Romano  
LORRAINE A. ROMANO  
SENIOR ATTORNEY

Approved: **APPROVED**  
DEPT. OF AUDIT & CONTROL  
By: JAN 19 2007  
For the State Comptroller  
Patricia McDonnell  
FOR THE STATE COMPTROLLER  
Date: \_\_\_\_\_

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

CONTRACT NUMBER 303218

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 ERIE COUNTY**

State of New York )  
 ) ss:  
County of Erie )

By: [Signature]

Title: \_\_\_\_\_ **Bruce L. Fisher**  
Date: \_\_\_\_\_ **Deputy CE**

On this 6 day of September, 2006, before me, the undersigned, personally appeared Bruce Fisher (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(ies), 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.

**Camille Williams**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 08/30/08

By: [Signature]  
Signature and office of the individual taking acknowledgment

Date: \_\_\_\_\_

**FOR DEPARTMENT**

By: [Signature]

Title: DIRECTOR OF MANAGEMENT & BUDGET SERVICES

Date: \_\_\_\_\_

Approved: JAN 19 2007

**APPROVED**  
DEPT. OF AUDIT & CONTROL  
[Signature]  
**FOR THE STATE COMPTROLLER**

Approved as to form:

By: \_\_\_\_\_  
for the Attorney General

Date: \_\_\_\_\_

**APPROVED AS TO FORM**  
NYS ATTORNEY GENERAL  
DEC 29 2006  
[Signature]  
LORRAINE J. REMO  
SENIOR ATTORNEY

By: \_\_\_\_\_  
For the State Comptroller

Date: \_\_\_\_\_

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, licensor, 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 nor 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 -- 7<sup>th</sup> 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 Holdharmless:** 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.

**V. 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 8.8% of the dollar value of this contract to Minority Owned Business Enterprises (MBEs) and at least 8.8% 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/lesd.htm](http://www.empire.state.ny.us/lesd.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 R. Belmore  
Director, Remedial Bureau D  
625 Broadway  
Albany, NY 12233-7017  
(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, 10<sup>th</sup> 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:

- (1) 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:

- (1) 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.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

RIDER TO APPENDIX B

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

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.

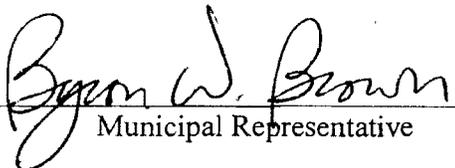
Dated: 12/6/06

Department of Environmental Conservation

By:   
Director of Management and Budget Services

Dated:

City of Buffalo

By:   
Municipal Representative

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

RIDER TO APPENDIX B

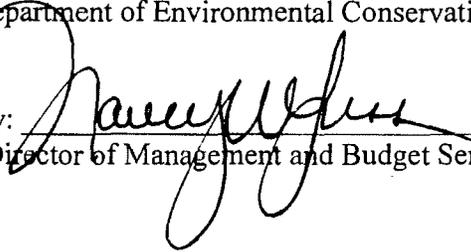
Standard Clauses for All New York State Department  
of Environmental Conservation Contracts

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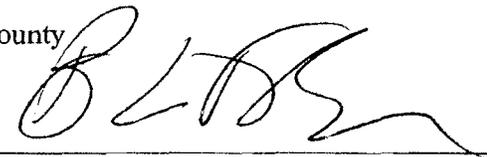
Dated: 12/6/06

Department of Environmental Conservation

By:   
Director of Management and Budget Services

Dated:

Erie County

By:   
Municipal Representative

**Bruce L. Fisher**  
Deputy CE

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

APPENDIX C

Proof of Ownership

State of New York )  
County of Erie )

I, Michael B. Risman, 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 the attorney for the City of Buffalo, the Municipality which is the applicant for State Assistance pursuant to Title 5 of Article 56 of the Environmental Conservation Law to undertake the Environmental Restoration Project known as Parcel 3 of the Union Ship Canal Project;
2. That the property located at 2 and 4 Fuhrmann Boulevard Buffalo, New York, Erie County and being that piece or parcel of property designated as Parcel No. 3, situate in Lot No. 18, in the Ogden Gore Tract, Township No. 10, Range No. 8, City of Buffalo, County of Erie, State of New York bounded and described as follows:

Beginning at a point on the easterly boundary of existing Commerce Street as delineated on Parcel No. 360 of Map No. 327 and acquired by The People of The State of New York for the former construction of Fuhrmann Boulevard – Hamburg Turnpike by Liber 10082 of Deeds at Page 121, at its intersection with the southerly boundary of the existing Union Ship Canal; thence easterly at an interior angle of  $93^{\circ} 52' 35''$  and along the southerly boundary of the said canal a distance of 1,901.10 feet to a point on the easterly boundary of the said canal; thence northerly at an exterior angle of  $90^{\circ} 00' 00''$  and along the easterly boundary of the said canal a distance of 200.00 feet to a point on the northerly boundary of the said canal; thence westerly at an exterior angle of  $90^{\circ} 00' 00''$  and along the northerly boundary of the said canal a distance of 1,903.72 feet to a point on the easterly boundary of the existing Fuhrmann Boulevard Extension as delineated on Parcel No. 361 of Map No. 327 and acquired by The People of The State of New York by said Liber 10082 of Deeds at Page 121; thence northerly at an interior angle of  $90^{\circ} 41' 00''$  and along the easterly boundary of the said Parcel No. 361 of Map No. 327 being the easterly boundary of said existing Fuhrmann Boulevard Extension a distance of 200.01 feet to a point; thence easterly at an interior angle of  $89^{\circ} 19' 00''$  and parallel with the northerly boundary of the said canal a distance of 1,924.19 feet to a point on the southwesterly line of land conveyed to Sherland Incorporation by Liber 10022 of Deeds at Page 218; thence southeasterly at an interior angle of  $144^{\circ} 26' 00''$  and along the said southwesterly line of land conveyed by said Liber 10022 of Deeds at Page 218 a distance of 223.64 feet to a point; thence southerly at an interior angle of  $125^{\circ} 34' 00''$  and parallel with the easterly boundary of the said canal a distance of 514.92 feet to a point; thence westerly at an interior angle of  $90^{\circ} 00' 00''$  and parallel with the southerly boundary of the said canal a distance of 2,117.70 feet to a point on the easterly boundary the said Parcel No. 360 of Map No. 327 being the easterly boundary of said existing Commerce Street; thence northerly at an interior angle of  $86^{\circ} 07' 25''$  and along the easterly boundary the

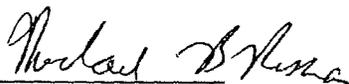
said Parcel No. 360 of Map No. 327 being the easterly boundary of said existing Commerce Street a distance of 245.56 feet to the point of beginning, being 22.175 acres of land more or less.

Subject to the easement rights of others as granted by virtue of Easement No. 2 described in Liber 6747 of Deeds at Page 507 for an underground drain.

Also, subject to the rights of others as granted by virtue of Liber 8636 of Deeds at Page 586 for a 20.00-foot wide sanitary sewer easement.

3. That I hereby certify to the Commissioner of Environmental Conservation that I have examined or caused to be examined the title to 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 Buffalo;
4. That annexed hereto is/are a certified copy/copies of the deed/deeds whereby such title to the Property was conveyed to the City of Buffalo, and that I hereby certified to the Commissioner of Environmental Conservation that the Property title to which is conveyed by said deed/deeds is identical to the property which is the subject of the project; and
5. That I make this affirmation to be attached as an exhibit and incorporated by reference into such application.

Affirmed this 8<sup>th</sup> day of February 2002

  
\_\_\_\_\_  
Michael B. Risman, Esq  
Corporation Counsel

MAIL TO BOX 150

REFEREE'S DEED

THIS INDENTURE made this 7<sup>TH</sup> day of NOVEMBER, 1997, between the CITY OF BUFFALO, by MARILYN J. SMITH, Deputy Commissioner of Administration and Finance, and Director of the Treasury, and as REFEREE, in the proceeding hereinafter mentioned, with offices at 65 Niagara Square, Buffalo, New York 14202,

Party of the First Part, and

THE CITY OF BUFFALO, a domestic municipal corporation with its principal office and place of business in the City Hall, No. 65 Niagara Square in the City of Buffalo, County of Erie and State of New York,

**FILED**

Party of the Second Part,

NOV 13 1997

ERIE COUNTY CLERK'S OFFICE WITNESSETH

WHEREAS, at a Term of the County Court, Erie County, held in the Erie County Hall in the City of Buffalo, New York, on the 8th day of September, 1997, it was, among other things, ordered, adjudged and decreed by said Court in a certain proceeding then pending in the said Court entitled:

IN THE MATTER OF FORECLOSURE OF TAX LIENS PURSUANT TO CHAPTER 724 OF THE LAWS OF NEW YORK 1973, BY THE CITY OF BUFFALO AFFECTING REAL PROPERTY LOCATED IN DISTRICT NOS. 1 THROUGH 14, INCLUSIVE.

Premises: Various Parcels  
Serial No.: See Attached List

In Rem Action No. 31  
Index No.: 1997/1967

That the City of Buffalo is the owner and holder of good and valid tax liens against the premises described in the List of Delinquent Taxes filed therein and in said judgment, and that all and singular premises described in said List of Delinquent Taxes and judgment, or such part thereof as is sufficient to satisfy such tax liens, and which might be sold separately without material injury to the parties interested, be sold at public auction according to law and the practice of said Court by and under the direction of the Commissioner of Administration and Finance, enforcing officer of the City of Buffalo, or by the Deputy Commissioner of Administration and Finance, appointed REFEREE in such proceeding and to whom it was referred by the said judgment, among other things, to make such sale; that the sale be made in the City where the said premises, or the greater part thereof, are situated; that said REFEREE give public notice of the time and place of said sale according to law and the course and practice of said Court, and that any of the parties to said proceeding might become a purchaser or purchasers at such sale; that the said REFEREE execute to the purchaser or purchasers of said premises, or such a part or parts thereof as shall be sold, a good and sufficient deed or deeds or conveyance for the same and pay the taxes, assessments and water rates which are liens upon the property sold, etc.; and

WHEREAS, the said REFEREE in pursuance of the order and judgment of said Court, did, on the 6th day of October, 1997 sell at public auction in the Buffalo Convention Center, Convention Center Plaza, in the City of Buffalo, County of Erie and State of New York 14202, the premises in the said order and judgment mentioned, due notice of the time and place of such sale being first given, pursuant to said judgment, at which sale the premises hereinafter described were sold to the party of the second part for the sum of One Dollar and no more (\$1.00 & no more), that being the highest sum bid for the same and being the highest bidder therefor;

NOW, THIS INDENTURE WITNESSETH: That the said MARILYN J. SMITH, Director of the Treasury of the City of Buffalo, as REFEREE, being the party of the first part to these presents, in order to carry into effect the sale made by her pursuant to the order and judgment of said Court, and in conformity with the statute in such case made and provided, and also in consideration of the premises and of the said sum of money so bid as aforesaid, having been first duly paid by the party of the second part, the receipt whereof is acknowledged, has bargained and sold and by these presents does grant and convey unto the said party of the second part, its heirs, successors and assigns, all of the right, title and interest which the said City of Buffalo, the County of Erie and all other persons, including the State of New York, infants, incompetents, absentees and non-residents, had at the time of the filing of said List of Delinquent

Taxes in said proceeding, or at any time thereafter, it being their interest in said premises which was so sold and is hereby conveyed, in and to,

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, bounded and described as follows:

SERIAL NO.

DESCRIPTION OF PROPERTY

DISTRICT NO.

SEE SCHEDULE "A" ATTACHED

CERTIFICATE NO.

SBL NO.

TO HAVE AND TO HOLD the premises herein granted unto the grantee its heirs, successors and assigns forever.

IN WITNESS WHEREOF, the grantor has hereunto set her hand and seal this 7<sup>th</sup> day of November, 1997.

Marilyn J. Smith  
MARILYN J. SMITH  
Director of the Treasury of the City of Buffalo,  
as Referee.

STATE OF NEW YORK)  
COUNTY OF ERIE ) ss.:  
CITY OF BUFFALO )

On this 7 day of November, 1997, before me the subscriber, personally appeared, MARILYN J. SMITH, Director of the Treasury of the City of Buffalo, as Referee, to me known and known to me to be the person described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same as Director of the Treasury of the City of Buffalo and Referee.

Mary K Cornful  
Commissioner of Deeds, Buffalo, New York  
My Commission expires 12/31/98

**REFEREE'S DEED**

IN THE MATTER OF FORECLOSURE OF TAX LIENS PURSUANT TO CHAPTER 724 OF THE LAWS OF NEW YORK 1973, BY THE CITY OF BUFFALO, AFFECTING REAL PROPERTY LOCATED IN DISTRICT NOS. 1 THROUGH 14, INCLUSIVE.

IN REM ACTION NO. . . . . 31  
INDEX NO. . . . . I 1997/1967  
PROPERTY: . . . . . Various Parcels struck down to the City of Buffalo - In Rem No. 31

THE CITY OF BUFFALO, BY MARILYN J. SMITH, as REFEREE

TO Box 150

THE CITY OF BUFFALO

Mailing Address: 65 Niagara Square, Buffalo, New York 14202

DATED: \_\_\_\_\_, 1997

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

RECORDED ON THE \_\_\_\_\_  
DAY OF \_\_\_\_\_ A.D.  
1997, AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_  
IN LIBER \_\_\_\_\_ OF DEEDS AT PAGE \_\_\_\_\_  
AND EXAMINED.

CLERK  
T:\WP601BEA\101R31.31\1R31STRU.DEE

SCHEDULE "A"

IN REM NO. 31

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
5	293 Myrtle 191.75 W Spring 00025 x 00078	111.81 -8 -17	1
7	541 Seneca 29. W Hamburg 00370 x 00150	111.81 -6 -3	1
50	330 Connecticut 81.36 NE Plymouth 00027 x 00099	099.67 -4 -14	2
89	31 Shields 150. S Mass 00025 x 00157	099.44 -10 -39	2
99	251 Vermont West Cor Normal 00036 x 00099	099.59 -6 -16	2
112	497 Busti 160. SE Jersey 00052 x 00132	099.82 -5 -1	2
133	298 Hudson 77.50 SW Plymouth 00037 x 00110	099.84 -4 -24	2
134	302 Hudson 40.50 SW Plymouth 00037 x 00110	099.84 -4 -23	2
145	209 Prospect 191.50 NW Virginia 00025 x 00100	110.36 -3 -7	2
164	107 Whitney 298.50 SE Virginia 00025 x 00089	110.36 -4 -33	2
206	368 Broadway West Cor. Hickory 00083 x 00114	111.48 -4 -17	3

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
210	42 Camp 525. S Genesee 00035 x 00100	111.33 -5 -22	3
211	52 Camp 425. S Genesee 00025 x 00100	111.33 -5 -18	3
212	318 Carlton 51.25 E Peach 24.99 Rear 00025 x 00107	100.81 -9 -27	3
214	109 Cherry 125. NE Hickory 00050 x 00126	111.32 -6 -2	3
230	411 Hickory 335.75 S Sycamore 00025 x 00157	111.40 -6 -31	3
231	419 Hickory 260.75 S Sycamore 00025 x 00161	111.40 -6 -34	3
232	254 High 51.25 E Locust 00025 x 00098	100.810 -1 -8	3
233	256 High 77.13 E Locust 00025 x 00092	100.810 -1 -7	3
234	259 High 56.25 W Lemon 00023 x 00087	100.810 -12 -42	3
240	43 Kane 450 S Genesee 00025 x 00100	111.330 -5 -51	3
241	16 Kane 130. N Sycamore 00027 x 00100	111.330 -6 -28	3

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
249	241 Maple 275.50 N Carlton 00030 x 00100	100.80 -6 -36	3
253	118 Mulberry So Cor Virginia 00033 x 00102	111.24 -9 -1	3
259	103 Peach 86.79 S Carlton 00042 x 00100	111.25 -3 -37	3
260	177 Peach 100. S High 00030 x 00100	100.810 -9 -41	3
262	164 Peach 208. S High 00030 x 00100	100.810 -10 -10	3
265	396 Spring 331. S Broadway 00024 x 00129	111.490 -6 -14	3
270	382 Sycamore 69 E Mortimer 00035 x 00090	111.330 -6 -36	3
274	440 Sycamore 78.66 NE Camp 00025 x 00098	111.330 -4 -32	3
280	366 William West Cor Iroquois Pl 00045 x 00110	111.570 -2 -15	3
283	456 Adams 127. S Beckwith 00025 x 00109	111.420 -3 -8	4
284	516 Adams 32.87 N Sycamore 00025 x 00109	111.340 -3 -16	4

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
286	29 B St 238 E Fillmore 00030 x 00142	100.840 -5 -5	4
287	31 B St 268 E Fillmore 00030 x 00142	100.840 -5 -6	4
290	427 Best 185. W Pershing 00025 x 00180	100.740 -2 -3	4
316	167 Fox 187.50 N Sycamore 00030 x 00132	111.270 -3 -27	4
328	32 Guilford 275.56 N Broadway 00030 x 00115	111.430 -4 -2	4
330	38 Guilford 365.56 N Broadway 00030 x 00115	111.350 -4 -59	4
346	755 Jefferson 120. N Brown 00030 x 00104	111.260 -5 -28	4
353	354 Johnson St. 198.50 N High 23.5 W of, 132.7 ONL; 4 00047 x 00117	100.740 -4 -20	4
355	384 Johnson St. 61.50 S North 00033 x 00141	100.740 -4 -10	4
358	63 Kosciuszko 258.23 S Stanislaus 00030 x 00100	112.220 -1 -48	4
359	46 Kosciuszko 437.23 S Stanislaus 00030 x 00097	112.210 -6 -19	4

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
362	138 Loepere 435.11 S Sycamore 00030 x 00108	101.770 -8 -18	4
365	258 Loepere 667.48 N. Sycamore 00030 x 00106	101.690 -2 -31	4
389	71 Rother 227.23 S Stanislaus 00030 x 00097	112.210 -6 -47	4
391	169 Rother 242.05 S Sycamore 00030 x 00097	101.780 -1 -27	4
392	301 Rother 450.40 S Wälden 00030 x 00131	101.700 -1 -64	4
401	489 Sherman 725. S Genesee 00025 x 00132	111.270 -2 -47	4
407	140 Stanislaus 36. W Sweet 00030 x 00104	101.770 -7 -24	4
412	196 Strauss 337.11 N Sycamore 00030 x 00139	100.840 -1 -67	4
413	228 Strauss 854.50 S Genesee 00030 x 00142	100.840 -1 -56	4
416	403 Sweet 394.38 N Sycamore 00030 x 00094	101.690 -4 -42	4
418	411 Sweet 514.38 N Sycamore 00030 x 00094	101.690 -4 -46	4

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
419	415 Sweet 544.38 Sycamore 00030 x 00094	101.690 -4 -47	4
423	404 Sweet 446.03 N Sycamore 00030 x 00094	101.690 -3 -35	4
424	428 Sweet 686.03 N Sycamore 00030 x 00094	101.690 -3 -27	4
427	474 Sweet 257.08 S Walden 00030 x 00094	101.690 -3 -12	4
428	530 Sycamore 117 E Monroe 00031 x 00041	111.340 -3 -18	4
436	992 Sycamore 88.14 E Woltz 00029 x 00130	101.770 -2 -16	4
438	996 Sycamore 146.90 E Woltz 00029 x 00128	101.770 -2 -14	4
464	232 Woltz 370.75 N Sycamore 00030 x 00118	101.770 -1 -6	4
465	298 Woltz 544, S Walden 00030 x 00118	101.690 -1 -18	4
466	79 Adams 306.02 N Clinton 00034 x 00107	111.660 -10 -3	4
467	91 Adams 213.50 S Howard 00030 x 00107	111.660 -10 -7	4

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
468	263 Adams 120. S Peckham 00030 x 00107	111.580 -4 -61	4
473	240 Adams 390 S Peckham 00030 x 00109	111.580 -3 -14	4
483	74 Clark 161.45 N Peckham 00029 x 00089	112.450 -1 -18	4
487	145 Coit 120. S Peckham 00030 x 00108	111.590 -6 -63	4
491	144 Coit 150. S Peckham 00030 x 00108	111.590 -5 -8	4
492	148 Coit 120 S Peckham 00030 x 00108	111.590 -5 -7	4
497	140 Detroit 150. S Peckham 00060 x 00108	111.590 -6 -10	4
499	244 Detroit 125. N Paderewski 00025 x 00108	111.430 -6 -26	4
501	264 Detroit 330. N Paderewski 00030 x 00108	111.430 -6 -19	4
518	129 Howard 30. W Einslie 00027 x 00093	111.660 -9 -15	4
520	423 Jefferson 420. S Peckham 00030 x 00110	111.580 -1 -43	4

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
536	14 Oneida 113. E Emslie 00030 x 00091	111.660 -7 -19	4
537	16 Oneida 143. E Emslie 00030 x 00096	111.660 -7 -18	4
544	42 Peckham 82. W Monroe 00027 x 00120	111.500 -2 -29	4
594	446 Dodge 32.50 E Pershing 00032 x 00120	100.580 -5 -27	5
614	1153 Jefferson 240. N Dodge 00030 x 00134	100.580 -7 -25	5
615	1203 Jefferson 55.50 S Kingsley 00058 x 00110	100.580 -1 -71	5
622	194 Landon 318.22 E Wohlers 00030 x 00142	100.510 -1 -58	5
652	87 Wohlers 202.40 N Dodge 00030 x 00111	100.590 -2 -24	5
684	164 Fougeron 34. W Kehr 00034 x 00130	101.530 -2 -25	5
685	172 Fougeron West Cor. Kehr 00034 x 00072	101.530 -2 -24	5
688	163 Fougeron 82.50 W Kehr 00027 x 00080	101.530 -4 -8	5

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
689	165 Fougeron 55. W Kehr 00027 x 00080	101.530 -4 -9	5
690	167 Fougeron 27.50 W Kehr 00027 x 00080	101.530 -4 -10	5
722	138 Mohican 211. W Fillmore 00031 x 00110	089.840 -1 -15	5
746	46 Sidney 90. E Lark 00030 x 00120	100.360 -2 -23	5
794	119 Chester 125. N Ferry 00025 x 00100	100.330 -2 -49	6
797	142 Chester 350. N Ferry 00025 x 00100	100.330 -1 -6	6
798	148 Chester 400. N Ferry 00025 x 00100	100.330 -1 -4	6
800	228 Chester 225. S Northland 00032 x 00100	100.250 -1 -7	6
807	15 Elsie 149 E Purdy 00028 x 00105	100.330 -4 -6	6
808	21 Elsie 146.83 W Alexander 00030 x 00105	100.330 -4 -8	6
814	258 Glenwood East Cor Verplanck 00033 x 00100	100.410 -5 -22	6

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
816	1022 Jefferson 224. N North 00051 x 00178	100.730 -3 -14	6
819	84 Laurel 155. E Michigan 00030 x 00110	100.480 -3 -41	6
820	86 Laurel 185. E Michigan 00024 x 00110	100.480 -3 -401	6
823	202 Laurel 90. W Purdy 00030 x 00110	100.490 -5 -14	6
837	346 Masten 154. N. Utica 00044 x 00196	100.480 -2 -20	6
847	223 Northampton 245. E Masten 00030 x 00129	100.570 -3 -5	6
866	274 Utica East 36.50 E Verplanck 00032 x 00100	100.490 -2 -31	6
875	204 Waverly 395. S Northland 00025 x 00100	100.250 -2 -18	6
876	218 Waverly 245. S Northland 00030 x 00100	100.250 -2 -13	6
1072	219 Jewett Avenue 227.33 W Holden 00030 x 00120	090.450 -1 -10	10
1231	1458 Genesee 219.96 W Fougeron to Fougeron 00069 x 00103	101.540 -4 -6	11

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
1348	114 Wende 226.50 N Ferry 00030 x 00110	101.320 -4 -18	11
1349	17 Zenner 126.64 N Genesee Exc Exc 4.32 x 29.41 SE C 00030 x 00093	101.400 -4 -28	11
1386	18 Warring 64.54 S Antwerp 00032 x 00103	101.490 -2 -18	11
1426	190 Miller 500.92 S Sycamore 00030 x 00097	101.710 -8 -21	12
1431	52 Oberlin 462.50 S Sycamore 00030 x 00150	101.790 -1 -1	12
1436	57 Ruhland 291.24 S Sycamore 00030 x 00109	101.700 -8 -20	12
1437	28 Ruhland 562.53 S Sycamore 00030 x 00107	101.780 -5 -13	12
1438	36 Ruhland 472.53 S Sycamore 00030 x 00107	101.780 -5 -10	12
1516	82 Amelia 180. W Germania 00095 x 00080	123.690 -2 -9	13
1521	2 Fuhrmann North Cor City Line 00632 x 00000	132.190 -1 -5	13
1522	4 Fuhrmann 632 N City Line 00780 x 00000	132.190 -1 -4	13

IN REM NO. 31 - cont'd.

<u>SERIAL NO.</u>	<u>DESCRIPTION OF PROPERTY</u>	<u>SBL NO.</u>	<u>DISTRICT</u>
1538	16 Archer 154. NE Seneca 137 NW of 00020 x 00028	123.470 -2 -24	14

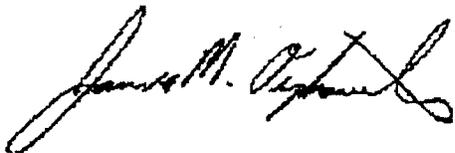
T:\WP60\BEA\INLONR31.31\SCHED-31.WP2

**CERTIFICATE OF TITLE****First American Title Insurance Company of New York**

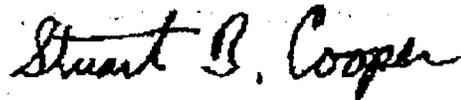
Title No. 3051-92813

**First American Title Insurance Company of New York** ("the Company") certifies to the "proposed insured(s)" listed herein that an examination of title to the premises described in Schedule A has been made in accordance with its usual procedure and agrees to issue its standard form of title insurance policy authorized by the Insurance Department of the State of New York, in the amount set forth herein, insuring the interest set forth herein, and the marketability thereof, in the premises described in Schedule A, after the closing of the transaction in conformance with the requirements and procedures approved by the Company and after the payment of the premium and fees associated herewith excepting (a) all loss or damage by reason of the estates, interests, defects, objections, liens, encumbrances and other matters set forth herein that are not disposed of to the satisfaction of the Company prior to such closing or issuance of the policy (b) any question or objection coming to the attention of the Company before the date of closing, or if there be no closing, before the issuance of the policy.

This Agreement to Insure shall terminate (1) if the prospective insured, his or her attorney or agent makes any untrue statement with respect to any material fact or suppresses or fails to disclose any material fact or if any untrue answers are given to material inquiries by or on behalf of the Company; or (2) upon the issuance of title insurance in accordance herewith. In the event that this Certificate is endorsed and redated by an authorized representative of the Company after the closing of the transaction and payment of the premium and fees associated herewith, such "redated" Certificate shall serve as evidence of the title insurance issued until such time as a policy of title insurance is delivered to the insured. Any claim made under the redated Certificate shall be restricted to the conditions, stipulations and exclusions from coverage of the standard form of title insurance policy issued by the Company.

**First American Title Insurance Company of New York**

*James M. Orphanides, President*



*Stuart B. Cooper, Esq., Vice President*

**CLOSING REQUIREMENTS**

1. **CLOSING DATE:** In order to facilitate the closing of title, please notify the closing department at least 48 hours prior to the closing, of the date and place of closing, so that searches may be continued.
2. **PROOF OF IDENTITY:** Identity of all persons executing the papers delivered on the closing must be established to the satisfaction of the Company.
3. **POWER OF ATTORNEY:** If any of the closing instruments are to be executed pursuant to a Power of Attorney, a copy of such Power should be submitted to the Company prior to closing. THE IDENTITY OF THE PRINCIPAL EXECUTING THE POWER AND THE CONTINUED EFFECTIVENESS OF THE POWER MUST BE ESTABLISHED TO THE SATISFACTION OF THE COMPANY. The Power must be in recordable form.
4. **CLOSING INSTRUMENTS:** If any of the closing instruments will be other than commonly used forms or contain unusual provisions, the closing can be simplified and expedited by furnishing the Company with copies of the proposed documents in advance of closing.
5. **LIEN LAW CLAUSE:** Deeds and mortgages must contain the covenant required by Section 13 of the Lien Law. The covenant is not required in deeds from referees or other persons appointed by a court for the sole purpose of selling property.
6. **REFERENCE TO SURVEYS AND MAPS:** Closing instruments should make no reference to surveys or maps unless such surveys or maps are on file.
7. **INTERMEDIARY DEEDS:** In the event an intermediary will come into title at closing, other than the ultimate insured, the name of such party must be furnished to the Company in advance of closing so that appropriate searches can be made and relevant exceptions considered.

**MISCELLANEOUS PROVISIONS**

1. THIS CERTIFICATE IS INTENDED FOR LAWYERS ONLY. YOUR LAWYER SHOULD BE CONSULTED BEFORE TAKING ANY ACTION BASED UPON THE CONTENTS HEREOF.
2. THE COMPANY'S CLOSER MAY NOT ACT AS LEGAL ADVISOR FOR ANY OF THE PARTIES OR DRAW LEGAL INSTRUMENTS FOR THEM. THE CLOSER IS PERMITTED TO BE OF ASSISTANCE ONLY TO AN ATTORNEY.
3. If the insured contemplates making improvements to the property costing more than twenty per centum of the amount of insurance to be issued hereunder, we suggest that the amount of insurance be increased to cover the cost thereof; otherwise, in certain cases the insured will become a co-insurer.
4. Our policy will except from coverage any state of facts which an accurate survey might show, unless survey coverage is ordered. When such coverage is ordered, this certificate will set forth the specific survey exceptions which we will include in our policy. Whenever the word "trim" is used in any survey exceptions from coverage, it shall be deemed to include, roof cornices, mouldings, belt courses, water tables, keystones, pilasters, portico, balcony all of which project beyond the street line.
5. Our examination of the title includes a search for any unexpired financing statements which affect fixtures and which have been properly filed and indexed pursuant to the Uniform Commercial Code in the office of the recording officer of the county in which the real property lies. No search has been made for other financing statements because we do not insure title to personal property. We will on request, in connection with the issuance of a title insurance policy, prepare such search for an additional charge. Our liability in connection with such search is limited to \$1,000.00.
6. This company must be notified immediately of the recording or the filing, after the date of this certificate, of any instrument and of the discharge or other disposition of any mortgage, judgment, lien or any other matter set forth in this certificate and of any change in the transaction to be insured or the parties thereto. The continuation will not otherwise disclose the disposition of any lien.
7. If affirmative insurance is desired regarding any of the restrictive covenants with respect to new construction or alterations, please request such insurance in advance of closing as this request should not be considered at closing.
8. If it is discovered that there is additional property or an appurtenant easement for which insurance is desired, please contact the Company in advance of closing so that an appropriate title search may be made. In some cases, our rate manual provides for an additional charge for such insurance.

**American Title Insurance Company of New York**

**438 Main Street, Suite 203  
Buffalo, New York 14202**

**Phone: (716)855-2:  
Fax: (888)722-21**

Proposed Insured	Amended	October 18, 2005
Purchaser: The People of the State of New York	Title No.:	3051-92813
Mortgagee:	Effective Date:	06/24/2005
	Redated:	

Amount of Insurance:  
Fee: \$0.00  
Mortgage: \$0.00

THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule "A", subject to the liens, encumbrances and other matter, if any, set forth in this certificate may be conveyed and or mortgaged by:

**City of Buffalo**

City of Buffalo

Premises described in Schedule "A" are known as:

Address:	Union Ship Canal, Buffalo, New York		
County:	Erie	City:	Buffalo
District:			
Section:			
Block:			
Lot:	18		

**For any Title Clearance Questions  
on this Report please call  
Dave Smith  
(716)855-2517**

NK

**First American Title Insurance Company of New York**

**Title No. 3051-92813  
Amended October 18, 2005**

**SCHEDULE "A"**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, being part of Lot 18 in the Ogden Gore Tract, Township 10, Range 8, bounded and described as follows:

BEGINNING at a point on the easterly boundary of existing Commerce Street as delineated on Parcel No. 360 on Map No. 327 and acquired by The People of the State of New York for the former construction of Fuhmann Boulevard - Hamburg Turnpike by Liber 10082 of Deeds at page 121, at its intersection with the southerly boundary of the existing Union Ship Canal; thence easterly at an interior angle of 93° 55' 00" and along the southerly boundary of the said canal a distance of 1,904.57 feet to a point on the easterly boundary of the said canal; thence northerly at an exterior angle of 90° 00' 00" and along the easterly boundary of the said canal a distance of 200.00 feet to a point on the northerly boundary of the said canal; thence westerly at an exterior angle of 90° 00' 00" and along the northerly boundary of the said canal a distance of 1,902.64 feet to a point on the easterly boundary of the existing Fuhmann Boulevard Extension as delineated on Parcel No. 361 of Map No. 327 and acquired by The People of The State of New York by said Liber 10082 of Deeds at page 121; thence northerly at an interior angle of 90° 51' 24" and along the easterly boundary of the said Parcel No. 361 of Map No. 327 being the easterly boundary of said existing Fuhmann Boulevard Extension a distance of 200.02 feet to a point; thence easterly at an interior angle of 89° 08' 36" and parallel with the northerly boundary of the said canal a distance of 1,923.74 feet to a point on the southwesterly line of land conveyed to Sherland Incorporated by Liber 10022 of Deeds at page 218; thence southeasterly at an exterior angle of 35° 34' 00" and along the said southwesterly line of land conveyed by said Liber 10022 of Deeds at page 218 a distance of 223.62 feet to a point; thence southerly at an exterior angle of 54° 26' 00" and parallel with the easterly boundary of the said canal a distance of 514.93 feet to a point; thence westerly at an interior angle of 90° 00' 00" and parallel with the southerly boundary of the said canal a distance of 2121.34 feet to a point on the easterly boundary of the said Parcel No. 360 of Map No. 327 being the easterly boundary of said existing Commerce Street; thence northerly at an interior angle of 86° 05' 00" and along the easterly boundary of the said Parcel No. 360 of Map No. 327 being the easterly boundary of said existing Commerce Street a distance of 245.57 feet to the point of beginning.

THE policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

**FOR CONVEYANCING ONLY: TOGETHER** with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.

**First American Title Insurance Company of New York**

**Title No. 3051-92811  
Amended October 18, 2005**

**SCHEDULE "B-I"  
(REQUIREMENTS)**

**THE FOLLOWING ARE REQUIREMENTS TO BE COMPLIED WITH FOR A TITLE POLICY TO ISSUE:**

1. Returns, if any of title search continuation since June 24, 2005 to the date of closing.
2. Rights and claims of parties in possession not shown of record.
3. Unpaid water charges, if any.
4. Any state of facts a personal inspection of premises would disclose.
5. Future installments of special assessments for improvements payable with county taxes.
6. New York Real Property Tax Law Section 302 and 520 may affect the real estate tax liability if the premises described in Schedule A have a tax exemption.

**First American Title Insurance Company of New York**

**Title No. 3051-9281:  
Amended October 18, 2005**

**SCHEDULE "B-II"  
(EXCEPTIONS)**

**THE POLICY WILL INCLUDE AS EXCEPTIONS TO TITLE THE FOLLOWING MATTERS UNLESS THEY ARE  
DISPOSED OF TO THE SATISFACTION OF THE COMPANY:**

1. Any state of facts an accurate survey would show and inspection of the premises would disclose.
2. Easement rights described in Liber 6747 of Deeds, at page 507.
3. Easement rights by and between the Hanna Furnace Corporation with Shenango Incorporation recorded in Liber 8636 of Deeds, at page 579 and in Liber 8636 of Deeds, at page 586.
4. Easement recorded in Liber 8694 of Deeds, at page 1.
5. Easement recorded in Liber 8643 of Deeds, at page 589.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

SCHEDULE A

Scope of Work

Municipality Name: City of Buffalo and Erie County  
Site Name: Hanna Furnace Sub-Parcel 3  
Site Address: 4 Fuhrmann Boulevard  
Buffalo, New York 14203  
Site Number: B00164

Contract Number: C303218

GENERAL PURPOSE

The general purpose of this project is to undertake all approved activities necessary to complete the Project required by this Contract. Project-specific Work Plans will become a part of and enforceable under this Contract upon approval by the Department.

GENERAL SCOPE

REMEDIATION:

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 (ROD). 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 a Site Management Plan, as required; submittal of a construction completion report and as-built drawings; and public participation.

REMEDIATION CALCULATION:

	<u>On-site</u>	<u>Off-site</u>	<u>Demolition/ Asbestos</u>	<u>Total</u>
Total Eligible Cost:	\$3,710,889	\$2,694,000	\$0	\$6,404,889
Percentage:	90%	100%	50%	N/A
Total SAC Amount:	\$3,339,800	\$2,694,000	\$0	\$6,033,800

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

SCHEDULE B

Payment Schedule

Municipality Name: City of Buffalo and Erie County  
Site Name: Hanna Furnace Sub-Parcel 3  
Site Address: 4 Fuhrmann Boulevard  
Buffalo, New York 14203  
Site Number: B00164

Contract Number: C303218

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

Erie County will serve as the lead applicant in matters of reimbursement related to the State Assistance Contract. Requests for reimbursement shall be submitted by the lead applicant in accordance with Schedule B. The lead applicant shall receive the full amount of reimbursements due and redistribute such amounts in accordance with the SAC resolutions.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

**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 Program 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 Department's "Procedures Handbook for Environmental Restoration Program Projects" available at the time of this Contract.

(vi) "Environmental Easement" shall mean an interest in the 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 contaminants at, or from, the Site.

(ix) "Municipal Share" means any money provided under this Contract by the Municipality for its share of the Contract. The 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 a Site Management Plan, , the cost of complying with the plan would not be eligible for reimbursement under this contract.

(xiii) "Site" means the Site which is the subject of the Project. 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.

**CITY CLERK'S OFFICE**  
**CITY HALL**

BUFFALO September 23, 2005

To Whom It May Concern:

I hereby Certify, That at a Session of the Common Council of the City of Buffalo, held in the City Hall, on the 23<sup>th</sup> Day of September 2003 The following item was Passed which the following is a true copy

No. 166

Mrs. Martino

**SUBJECT: Union Ship Canal**

Whereas: On February 19, 2002, this body, as lead agency, accepted the Final Generic Environmental Impact Statement and subsequently accepted the Finding Statement of the Union Ship Canal Development Project GEIS; and

Whereas: The action as described in the project's Final GEIS is to return this former industrial property to productive use through: infrastructure improvements, rezoning for appropriate industrial and commercial uses; and to create a waterfront park that provides access to the canal thereby enhancing surrounding property for commercial development; and

Whereas: Prior to developing the 22 acre public access park, environmental investigations have indicated that Remediation of the parcel will be necessary; and

Whereas: In order to fund the costs of Remediation, we find it in the City's interest to apply to New York State for a remediation grant pursuant to the 1996 Clean Air /Clean Water Bond Act. This act permits municipalities to be reimbursed for 90% of costs incurred in undertaking a remediation pursuant to said program; and

Whereas: The County of Erie has committed to providing the City of Buffalo's 10% share of these costs pursuant to the terms and conditions of an agreement entered into between the County of Erie and Development Downtown, Inc. dated June 29, 2001 and an agreement entered into between the Development Downtown Inc. and the City of Buffalo dated June 2001; and

and the City of Buffalo dated June 2001; and

Now, Therefore, Be It Resolved:

That this body hereby authorizes the Mayor to execute any and all documents necessary to apply for and accept funding from New York State pursuant to the 1996 Clean Air/ Clean Water Bond Fund to remediate the 22 acre City owned portion of the Union Ship Canal redevelopment property.

PASSED

AYES - 11 - NOES - 0

This item was signed by the Mayor on 12-30-2003 and returned to the City Clerks office on 12-31-2003

Attest \_\_\_\_\_  
Deputy City Clerk

**City Clerk's Department  
BUFFALO**

**December 26, 2003**

HON. ANTHONY M. MASIELLO

MAYOR OF BUFFALO

DEAR SIR:

Pursuant to the provisions of Section 3-19 of the Charter, I present herewith the attached resolution item.

No. 166 Union Ship Canal

PASSED December 23, 2003

Charles Michaux III  
City Clerk

*Handwritten:*  
No. 166 Union Ship Canal  
PASSED  
December 23, 2003

By: Mrs. Martino

000166

**SUBJECT: Union Ship Canal**

Whereas: On February 19, 2002, this body, as lead agency, accepted the Final Generic Environmental Impact Statement and subsequently accepted the Finding s Statement of the Union Ship Canal Development Project GEIS; and

Whereas: The action as described in the project's Final GEIS is to return this former industrial property to productive use through: infrastructure improvements, rezoning for appropriate industrial and commercial uses; and to create a waterfront park that provides access to the canal thereby enhancing surrounding property for commercial development; and

Whereas: Prior to developing the 22 acre public access park, environmental investigations have indicated that remediation of the parcel will be necessary; and

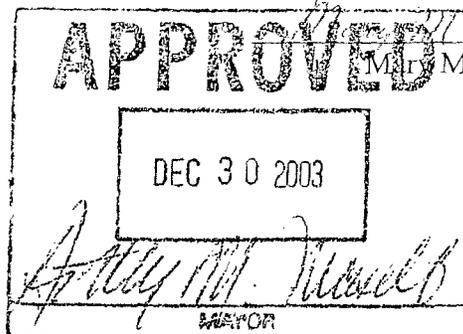
Whereas: In order to fund the costs of remediation, we find it in the City's interest to apply to New York State for a remediaton grant pursuant to the 1996 Clean Air /Clean Water Bond Act. This act permits municipalities to be reimbursed for 90% of costs incurred in undertaking a remediation pursuant to said program; and

Whereas: The County of Erie has committed to providing the City of Buffalo's 10% share of these costs pursuant to the terms and conditions of an agreement entered into between the County of Erie and Development Downtown, Inc. dated June 29, 2001 and an agreement entered into between the Development Downtown Inc. and the City of Buffalo dated June 2001; and

Now, Therefore, Be It Resolved:

That this body hereby authorizes the Mayor to execute any and all documents necessary to apply for and accept funding from New York State pursuant to the 1996 Clean Air/ Clean Water Bond Fund to remediate the 22 acre City owned portion of the Union Ship Canal redevelopment property.

**PASSED**



*Martino*  
\_\_\_\_\_  
Mrs. M. Martino

*68*

CERTIFICATE OF RECORDING OFFICER

That the attached Resolution is a true and correct copy of the Resolution, as regularly adopted at a legally convened meeting of the Erie County Legislature, duly held on the 20th day of January, 2005;

And further that such Resolution has been recorded in the Minutes in my office.  
(Title of Record Book)

In witness thereof, I have hereunto set my hand this 5<sup>th</sup> day of May, 2005.

Ken Kelley  
Signature of Recording Officer

Clerk  
Title of Recording Officer

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., January 20, 2005

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, *That at the 2nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twentieth day of January A.D., 2005, a Resolution was adopted, of which the following is a true copy:*

WHEREAS, The County of Erie is interested in facilitating the re-use of brownfields; and

WHEREAS, The City of Buffalo owns an approximately 20-acre site surrounding the Union Ship Canal which is an abandoned industrial brownfield and desires to construct new roads, utilities, pedestrian walkways and redevelop the parcel into a passive recreational open space; and

WHEREAS, Initial environmental and underwater investigations have been completed in association with state and federal agencies and the County desires to continue the development of the public open space; and

WHEREAS, Funding for the next phase of work was previously approved by resolution (Comm. 13E-25, dated June 21, 2001) and the County would like to amend that resolution to allow the County to enter into contracts with consultants and state and federal funding agencies,

NOW, THEREFORE, BE IT

RESOLVED, That this resolution amends Comm.13E-25, to authorize the County Executive to enter into contracts with the Erie County Industrial Development Agency, Buffalo Urban Development Corporation, the City of Buffalo, the State of New York and its agencies, and the U.S. Army Corps of Engineers and other federal agencies for the purpose of funding projects which will move the Union Ship Canal Public Open Space project forward; and be it further

RESOLVED, That the County Executive is authorized to enter into contracts with consultants and contractors for the purpose of design and construction of the Union Ship Canal Public Open Space; and be it further

RESOLVED, That the County Executive is authorized to enter into agreements for easements as may be necessary for infrastructure improvements such as sewers, utilities, bike trails, parking areas, and roadways; and be it further

RESOLVED, That the County Executive is authorized to enter into agreements for purposes of environmental remediation, indemnification or environmental covenants with the City of Buffalo, Buffalo Urban Development Corporation, Erie County Industrial Development Agency, the State of New York and its agencies; and be it further

RESOLVED, That the County Executive is the representative authorized to act in behalf of the County in all matters related to State Assistance under ECL Article 56, Title 5. The County Executive is also authorized to make application, execute the State Assistance Contract, submit project documentation, and otherwise act for the County's governing body in matters related to the project and to State Assistance; and be it further

ATTEST



KEVIN M. KELLEY  
*Clerk of the Legislature of Erie County*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., January 20, 2005

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 2nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the *Twentieth* day of *January* A.D., 2005, a Resolution was adopted, of which the following is a true copy:

RESOLVED, That the County agrees that it will fund its portion of the cost of the project and the funds will be available to initiate the project's filed work within twelve months of written approval of its application by the Department of Environmental Conservation; and be it further

RESOLVED, That one certified copy of the authorization be prepared and sent to the Albany office of the New York Department of Environmental Conservation together with the Application for State Assistance; and be further

RESOLVED, That the source of funds will be remaining funds previous authorized by resolution Comm. 13E-25 in June, 2001, available in the approved 2001 Erie County Capital Budget; and be it

RESOLVED, That the Clerk of the Legislature be directed to send certified copies of this resolution to the County Executive; the Director of the Division of Budget, Management and Finance; the Comptroller; the Commissioner of the Department of Environment and Planning; and the County Attorney.

REFERENCE: Comm. 30E-32  
AS AMENDED: January 20, 2005

ATTEST



KEVIN M. KELLEY  
*Clerk of the Legislature of Erie County*

**AMENDMENT #1**

**STATE ASSISTANCE CONTRACT C303218**

**(Term extended to November 30, 2010)**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

-----  
IN RE:

Municipality Name: City of Buffalo and Erie County  
Site Name: Hanna Furnace Sub-Parcel 3  
Site Address: 4 Fuhrmann Boulevard Contract Number: C303218  
Buffalo, New York 14203  
Site Number: B00164 Amendment Number: 1  
-----

This CONTRACT (Amendment No. 1) is made between the New York State Department of Environmental Conservation (Department), acting for and on behalf of the State, and the City of Buffalo, with offices located at 65 Niagara Square, Buffalo, New York 14202, jointly with Erie County, with offices located at Edward A. Rath County Office Building, 95 Franklin Street, Buffalo, New York 14202, hereinafter collectively referred to as the "Municipality."

WITNESSETH

WHEREAS, the Department and the Municipality entered into a contract on January 19, 2007 (Original Contract), which was duly assigned Contract No. C 303218 by the Office of the State Comptroller (State Comptroller); and

WHEREAS, there are circumstances necessitating a modification of the Original Contract and the parties desire to amend said Original Contract,

NOW, THEREFORE, in consideration of the mutual covenants, promises, representations, and conditions made herein, the parties agree as follows:

(1). Section XVII, entitled "Miscellaneous U." of the Original Contract is hereby repealed and rescinded in its entirety and is replaced with the following:

U. The term of this Contract shall start February 17, 2005. This Contract shall end on November 30, 2010. The 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.

(2). Section XV of the Original Contract, entitled "Communications A.," is hereby repealed and rescinded in its entirety and is replaced with the following:

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:

David Locey  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203

Martin Doster  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203  
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

Mary Von Wergers  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-5500  
Correspondence only

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

Byron Brown  
Mayor  
City of Buffalo  
65 Niagara Square  
Buffalo, New York 14202

Dennis Sutton  
City of Buffalo  
Office of Strategic Planning  
920 City Hall  
Buffalo, New York 14202

Chris Collins  
County Executive  
Erie County  
95 Franklin Street  
Buffalo, New York 14202

Christopher Pawenski  
Coordinator, Industrial Assistance Program  
Erie County Department of Environment & Planning  
95 Franklin Street  
Buffalo, New York 14202

- (3). Appendix A dated May 2003 is hereby deleted, and Appendix A dated June 2006 is attached hereto.
- (4). This Contract and Amendment No. 1 will be effective upon approval and filing by the State Comptroller in accordance with Section 112 of the State Finance Law.
- (5). Except as specifically modified herein, all terms and conditions of the Original Contract remain in full force and effect.





FOR DEPARTMENT

By:

Title:

Date:

*Nancy Weiss*  
*Director of mgmt & Budget*  
*July 1, 2008*

Approved as to form:

By:

for the Attorney General

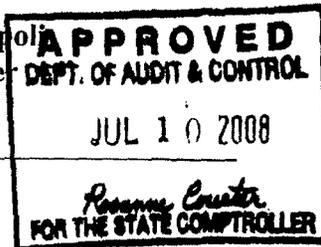
Date:

Approved:

Thomas P. DiNapoli  
State Comptroller

By:

Date:



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, licensor, 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 \$50,000 (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 \$85,000 (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 nor 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 affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms 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, 110 State Street, 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 -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<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.

**CITY CLERK'S OFFICE  
CITY HALL**

BUFFALO April 14, 2008

To Whom It May Concern:

I hereby Certify, That at a Session of the Common Council of the City of Buffalo, held in the City Hall, on the 23<sup>rd</sup> day of December, 2003 The following item was Passed which the following is a true copy. As of April 14, 2008 the following item is still in effect.

No. 166

Mrs. Martino

**SUBJECT: Union Ship Canal**

Whereas: On February 19, 2002, this body, as lead agency, accepted the Final Generic Environmental Impact Statement and subsequently accepted the Finding Statement of the Union Ship Canal Development Project GEIS; and

Whereas: The action as described in the project's Final GEIS is to return this former industrial property to productive use through: infrastructure improvements, rezoning for appropriate industrial and commercial uses; and to create a waterfront park that provides access to the canal thereby enhancing surrounding property for commercial development; and

Whereas: Prior to developing the 22 acre public access park, environmental investigations have indicated that Remediation of the parcel will be necessary; and

Whereas: In order to fund the costs of Remediation, we find it in the City's interest to apply to New York State for a remediation grant pursuant to the 1996 Clean Air /Clean Water Bond Act. This act permits municipalities to be reimbursed for 90% of costs incurred in undertaking a remediation pursuant to said program; and

Whereas: The County of Erie has committed to providing the City of Buffalo's 10% share of these costs pursuant to the terms and conditions of an agreement entered into between the County of Erie and Development Downtown, Inc. dated June 29, 2001 and an agreement entered into between the Development Downtown Inc.

and the City of Buffalo dated June 2001; and

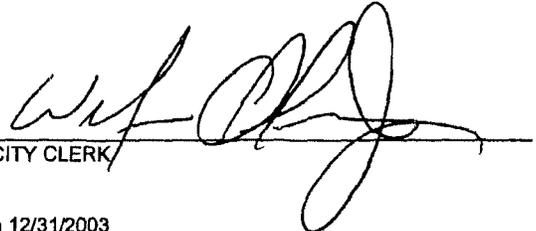
Now, Therefore, Be It Resolved:

That this body hereby authorizes the Mayor to execute any and all documents necessary to apply for and accept funding from New York State pursuant to the 1996 Clean Air/ Clean Water Bond Fund to remediate the 22 acre City owned portion of the Union Ship Canal redevelopment property.

PASSED

AYES - 11 - NOES - 0

ATTEST  
DEPUTY CITY CLERK



Above item was signed by the Mayor on 12/30/2003 and returned to the City Clerk's Office on 12/31/2003

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., January 20, 2005

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 2nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the *Twentieth* day of *January* A.D., 2005, a Resolution was adopted, of which the following is a true copy:

WHEREAS, The County of Erie is interested in facilitating the re-use of brownfields; and

WHEREAS, The City of Buffalo owns an approximately 20-acre site surrounding the Union Ship Canal which is an abandoned industrial brownfield and desires to construct new roads, utilities, pedestrian walkways and redevelop the parcel into a passive recreational open space; and

WHEREAS, Initial environmental and underwater investigations have been completed in association with state and federal agencies and the County desires to continue the development of the public open space; and

WHEREAS, Funding for the next phase of work was previously approved by resolution (Comm. 13E-25, dated June 21, 2001) and the County would like to amend that resolution to allow the County to enter into contracts with consultants and state and federal funding agencies,

NOW, THEREFORE, BE IT

RESOLVED, That this resolution amends Comm.13E-25, to authorize the County Executive to enter into contracts with the Erie County Industrial Development Agency, Buffalo Urban Development Corporation, the City of Buffalo, the State of New York and its agencies, and the U.S. Army Corps of Engineers and other federal agencies for the purpose of funding projects which will move the Union Ship Canal Public Open Space project forward; and be it further

RESOLVED, That the County Executive is authorized to enter into contracts with consultants and contractors for the purpose of design and construction of the Union Ship Canal Public Open Space; and be it further

RESOLVED, That the County Executive is authorized to enter into agreements for easements as may be necessary for infrastructure improvements such as sewers, utilities, bike trails, parking areas, and roadways; and be it further

RESOLVED, That the County Executive is authorized to enter into agreements for purposes of environmental remediation, indemnification or environmental covenants with the City of Buffalo, Buffalo Urban Development Corporation, Erie County Industrial Development Agency, the State of New York and its agencies; and be it further

RESOLVED, That the County Executive is the representative authorized to act in behalf of the County in all matters related to State Assistance under ECL Article 56, Title 5. The County Executive is also authorized to make application, execute the State Assistance Contract, submit project documentation, and otherwise act for the County's governing body in matters related to the project and to State Assistance; and be it further

I also certify that  
this resolution is still  
in effect as of April 23, 2008

ATTEST

  
Robert M. Grazian  
Clerk  
April 23, 2008



KEVIN M. KELLEY  
Clerk of the Legislature of Erie County

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., January 20, 2005

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 2nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twentieth day of January A.D., 2005, a Resolution was adopted, of which the following is a true copy:

RESOLVED, That the County agrees that it will fund its portion of the cost of the project and the funds will be available to initiate the project's filed work within twelve months of written approval of its application by the Department of Environmental Conservation; and be it further

RESOLVED, That one certified copy of the authorization be prepared and sent to the Albany office of the New York Department of Environmental Conservation together with the Application for State Assistance; and be further

RESOLVED, That the source of funds will be remaining funds previous authorized by resolution Comm. 13E-25 in June, 2001, available in the approved 2001 Erie County Capital Budget; and be it

RESOLVED, That the Clerk of the Legislature be directed to send certified copies of this resolution to the County Executive; the Director of the Division of Budget, Management and Finance; the Comptroller; the Commissioner of the Department of Environment and Planning; and the County Attorney.

REFERENCE: Comm. 30E-32  
AS AMENDED: January 20, 2005

ATTEST



KEVIN M. KELLEY  
*Clerk of the Legislature of Erie County*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., JULY 3, 2003

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 13<sup>th</sup> Session of the Legislature of Erie County, held in the County Hall, in the City of Buffalo, on the **Third** day of **July A.D., 2003**, a Resolution was adopted, of which the following is a true copy:

WHEREAS, The County of Erie, is interested in fostering business growth and job creation within Erie County; and

WHEREAS, Erie County desires to encourage the environmentally sound reuse of urban brownfields for productive use, be it industrial, commercial or recreational; and

WHEREAS, The Development Downtown Inc. owns an approximately 100 acres site known as the Union Ship Canal site which is an abandoned industrial brownfield and desires to construct new roads, utilities, pedestrian walkways and redevelop the parcel into productive reuse; and

WHEREAS, Erie County desires to work with the ECIDA and the City of Buffalo to redevelop this brownfield and assist in funding the costs of construction through various state and federal programs and direct contracting for these services where appropriate; and

WHEREAS, Erie County recognizes the need for local financial participation in order to receive state and federal funding assistance in brownfield redevelopment programs,

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive is authorized to enter into contracts not to exceed two million dollars (\$2,000,000.00), with the Erie County Industrial Development Agency, Development Downtown Inc, the City of Buffalo, the Buffalo Sewer Authority, the City of Lackawanna and the U.S. Army Corp of Engineers for the purpose of funding projects which will move the Union Ship Canal redevelopment forward; and be it further

RESOLVED, that the County Executive is authorized to enter into agreements for ownership of property or easements as may be necessary for infrastructure improvements such as sewers or roadways; and be it further

RESOLVED, that the County Executive is authorized to enter into agreements for purposes of environmental remediation, indemnification or environmental covenants with the City of Buffalo, the Buffalo Sewer Authority, Development Downtown Inc., Erie County Industrial Development Agency, the City of Lackawanna and the New York State Department of Environmental Conservation; and be it further

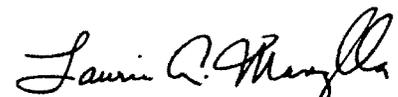
RESOLVED, that the source of funds will be \$2,000,000.00 available in the approved 2001 and 2002 Erie County Capital Budget, subject to approval of a bond resolution for this purpose; and be it further

RESOLVED, that any revenues received by the Erie County Industrial Development Agency, Development Downtown Inc. or by the City of Buffalo or any of its development agencies as reimbursements from grant sources, which were originally funded by this appropriation, be retained in a separate account, for future Union Ship Canal projects and that reuse of these funds be contingent upon approval of the Commissioner of the Department of Environment and Planning; and be it further

RESOLVED, That the Clerk of the Legislature be directed to send certified copies of this resolution to the Director of the Division of Budget, Management and Finance, the Comptroller, the Commissioner of the Department of Environment and Planning and the County Attorney.

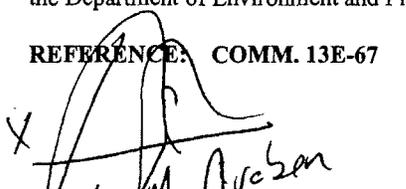
REFERENCE: COMM. 13E-67

ATTEST

  
LAURIE A. MANZELLA  
Clerk of the Legislature of Erie County

*I also certify that this resolution is still in effect as of April 23, 2008*



X  
  
Robert M. Overson  
Clerk  
April 23, 2008

**AMENDMENT #2**

**STATE ASSISTANCE CONTRACT C303218**

**(Term extended to December 31, 2011)**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

-----  
IN RE:

Municipality Name: City of Buffalo and Erie County  
Site Name: Hanna Furnace Sub-Parcel 3  
Site Address: 4 Fuhrmann Boulevard Contract Number: C303218  
Buffalo, New York 14203  
Site Number: B00164 Amendment Number: 2  
-----

This CONTRACT (Amendment No. 2) is made between the New York State Department of Environmental Conservation (Department), acting for and on behalf of the State, and the City of Buffalo, with offices located at 65 Niagara Square, Buffalo, New York 14202, jointly with Erie County, with offices located at Edward A. Rath County Office Building, 95 Franklin Street, Buffalo, New York 14202, hereinafter collectively referred to as the "Municipality."

WITNESSETH

WHEREAS, the Department and the Municipality entered into a contract on January 19, 2007 (Original Contract), which was duly assigned Contract No. C303218 by the Office of the State Comptroller (State Comptroller); and

WHEREAS, the Original Contract was modified by the parties by Amendment No. 1, dated July 10, 2008; and

WHEREAS, there are circumstances necessitating a modification of the Original Contract and the parties desire to amend said Original Contract,

NOW, THEREFORE, in consideration of the mutual covenants, promises, representations, and conditions made herein, the parties agree as follows:

(1). Item "U" in Section XVII of the Original Contract is hereby revised and updated as follows:

U. The term of this Contract shall start February 17, 2005. This Contract shall end on December 31, 2011. The 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.

(2). Section XV of the Original Contract, entitled "Communications A.", is hereby revised and updated as follows:

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:

David Locey  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203

Martin Doster  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203  
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

Ben Conlon  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-1500  
Correspondence only

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

Byron Brown  
Mayor  
City of Buffalo  
65 Niagara Square  
Buffalo, New York 14202

Dennis Sutton  
City of Buffalo  
Office of Strategic Planning  
920 City Hall  
Buffalo, New York 14202

Chris Collins  
County Executive  
Erie County  
95 Franklin Street  
Buffalo, New York 14202

Christopher Pawenski  
Coordinator, Industrial Assistance Program  
Erie County Department of Environment & Planning  
95 Franklin Street  
Buffalo, New York 14202

- (3). Payments for expenditures incurred under this contract will be rendered electronically to the Recipient. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Recipient shall comply with the Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at (518) 474-4032. The Recipient acknowledges that it will not receive payment under this Contract if it does not comply with the Comptroller's electronic payment procedures.
- (4). This Contract and Amendment No: 2 will be effective upon approval and filing by the State Comptroller in accordance with Section 112 of the State Finance Law.
- (5). Except as specifically modified herein, all terms and conditions of the Original Contract remain in full force and effect.

AMEND NEW SACS (July 2007)

SITE NUMBER: B00164

CONTRACT NUMBER: C303218

NEW YORK STATE  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

In witness whereof, the parties have signed this Contract on the date indicated below 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 DEC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Nancy White*  
Director of Mgmt & Budget Svcs.  
November 29, 2010

**FOR DOL**

Approved as to form:

By: \_\_\_\_\_

for the Attorney General

Date: \_\_\_\_\_

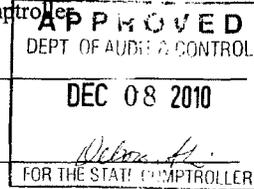
**FOR OSC**

Approved:

Thomas P. DiNapoli  
State Comptroller

By: \_\_\_\_\_

Date: \_\_\_\_\_



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

SITE NUMBER: B00164

CONTRACT NUMBER: C303218

NEW YORK STATE  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

In witness whereof, the parties have signed this Contract on the date indicated below each signature. The signatory for the State 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, COUNTY OR INDUSTRIAL DEVELOPMENT AGENCY**  
(If multiple grantees, each must complete this page. Make additional copies as needed).

Name: City of Buffalo

By: Byron W. Brown

Title: Mayor

Date: 9/15/2010

State of New York )  
County of Erie ) ss:

On this 15 day of September, 2010, before me, the undersigned, personally appeared Byron W. Brown (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(ies), 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.

By: Rose T. Bell-Alongi  
Signature and office of the individual taking acknowledgment

Date: 9/15/2010

ROSE T. BELL-ALONGI  
Notary Public  
Buffalo  
2010

SITE NUMBER: B00164

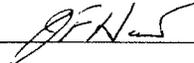
CONTRACT NUMBER: C303218

NEW YORK STATE  
ENVIRONMENTAL RESTORATION PROGRAM  
STATE ASSISTANCE CONTRACT

In witness whereof, the parties have signed this Contract on the date indicated below each signature. The signatory for the State 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, COUNTY OR INDUSTRIAL DEVELOPMENT AGENCY**  
(If multiple grantees, each must complete this page. Make additional copies as needed).

Name: Erie County

By: 

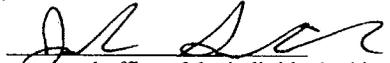
Title: Jeff Hart  
Deputy County Executive

Date: 7/16/10

State of New York )  
County of Erie ) ss:  
)

On this 16th day of July, 2010, before me, the undersigned, personally appeared Jeff Hart (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(ies), 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.

**Jonathan Schmieder**  
Notary Public State of New York  
Qualified in Erie County  
Commission Expires 06/01/2014

By:   
Signature and office of the individual taking acknowledgment

Date: 7/16/2010

CITY CLERK'S OFFICE  
CITY HALL

BUFFALO September 23, 2010

To Whom It May Concern:

I hereby Certify, That at a Session of the Common Council of the City of Buffalo, held in the City Hall, on the 23rd day of December, 2003 The following Resolution was Passed which the following is a true copy.

No. 166

Mrs. Martino

SUBJECT: Union Ship Canal

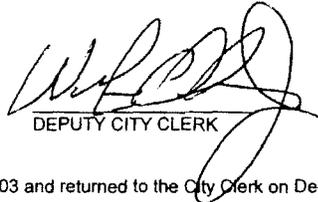
Whereas: On February 19, 2002, this body, as lead agency, accepted the Final Generic Environmental Impact Statement and subsequently accepted the Finding Statement of the Union Ship Canal Development Project GEIS; and  
Whereas: The action as described in the project's Final GEIS is to return this former industrial property to productive use through: infrastructure improvements, rezoning for appropriate industrial and commercial uses; and to create a waterfront park that provides access to the canal thereby enhancing surrounding property for commercial development; and  
Whereas: Prior to developing the 22 acre public access park, environmental investigations have indicated that Remediation of the parcel will be necessary; and  
Whereas: In order to fund the costs of Remediation, we find it in the City's interest to apply to New York State for a remediation grant pursuant to the 1996 Clean Air /Clean Water Bond Act. This act permits municipalities to be reimbursed for 90% of costs incurred in undertaking a remediation pursuant to said program; and  
Whereas: The County of Erie has committed to providing the City of Buffalo's 10% share of these costs pursuant to the terms and conditions of an agreement entered into between the County of Erie and Development Downtown, Inc. dated June 29, 2001 and an agreement entered into between the Development Downtown Inc. and the City of Buffalo dated June 2001; and

Now, Therefore, Be It Resolved:

That this body hereby authorizes the Mayor to execute any and all documents necessary to apply for and accept funding from New York State pursuant to the 1996 Clean Air/ Clean Water Bond Fund to remediate the 22 acre City owned portion of the Union Ship Canal redevelopment property.

PASSED

AYES - 11 - NOES - 0



DEPUTY CITY CLERK

The above resolution was signed by the Mayor on December 30, 2003 and returned to the City Clerk on December 31, 2003.

*This resolution remains in true force and effect. 7/23/2010*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N. Y., JULY 3, 2003

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 13<sup>th</sup> Session of the Legislature of Erie County, held in the County Hall, in the City of Buffalo, on the **Third** day of **July A.D., 2003**, a Resolution was adopted, of which the following is a true copy:

WHEREAS, The County of Erie, is interested in fostering business growth and job creation within Erie County; and

WHEREAS, Erie County desires to encourage the environmentally sound reuse of urban brownfields for productive use, be it industrial, commercial or recreational; and

WHEREAS, The Development Downtown Inc. owns an approximately 100 acres site known as the Union Ship Canal site which is an abandoned industrial brownfield and desires to construct new roads, utilities, pedestrian walkways and redevelop the parcel into productive reuse; and

WHEREAS, Erie County desires to work with the ECIDA and the City of Buffalo to redevelop this brownfield and assist in funding the costs of construction through various state and federal programs and direct contracting for these services where appropriate; and

WHEREAS, Erie County recognizes the need for local financial participation in order to receive state and federal funding assistance in brownfield redevelopment programs,

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive is authorized to enter into contracts not to exceed two million dollars (\$2,000,000.00), with the Erie County Industrial Development Agency, Development Downtown Inc, the City of Buffalo, the Buffalo Sewer Authority, the City of Lackawanna and the U.S. Army Corp of Engineers for the purpose of funding projects which will move the Union Ship Canal redevelopment forward; and be it further

RESOLVED, that the County Executive is authorized to enter into agreements for ownership of property or easements as may be necessary for infrastructure improvements such as sewers or roadways; and be it further

RESOLVED, that the County Executive is authorized to enter into agreements for purposes of environmental remediation, indemnification or environmental covenants with the City of Buffalo, the Buffalo Sewer Authority, Development Downtown Inc., Erie County Industrial Development Agency, the City of Lackawanna and the New York State Department of Environmental Conservation; and be it further

RESOLVED, that the source of funds will be \$2,000,000.00 available in the approved 2001 and 2002 Erie County Capital Budget, subject to approval of a bond resolution for this purpose; and be it further

RESOLVED, that any revenues received by the Erie County Industrial Development Agency, Development Downtown Inc. or by the City of Buffalo or any of its development agencies as reimbursements from grant sources, which were originally funded by this appropriation, be retained in a separate account, for future Union Ship Canal projects and that reuse of these funds be contingent upon approval of the Commissioner of the Department of Environment and Planning; and be it further

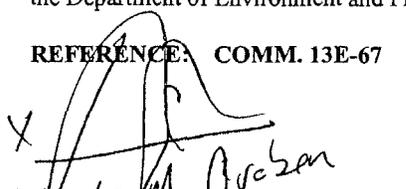
RESOLVED, That the Clerk of the Legislature be directed to send certified copies of this resolution to the Director of the Division of Budget, Management and Finance, the Comptroller, the Commissioner of the Department of Environment and Planning and the County Attorney.

REFERENCE: COMM. 13E-67

ATTEST

  
LAURIE A. MANZELLA  
Clerk of the Legislature of Erie County

*I also certify that this resolution is still in effect as of April 23, 2008*

*X*  
  
Robert M. Orszan  
Clerk  
April 23, 2008



# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., January 20, 2005

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 2nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the *Twentieth* day of *January* A.D., 2005, a Resolution was adopted, of which the following is a true copy:

WHEREAS, The County of Erie is interested in facilitating the re-use of brownfields; and

WHEREAS, The City of Buffalo owns an approximately 20-acre site surrounding the Union Ship Canal which is an abandoned industrial brownfield and desires to construct new roads, utilities, pedestrian walkways and redevelop the parcel into a passive recreational open space; and

WHEREAS, Initial environmental and underwater investigations have been completed in association with state and federal agencies and the County desires to continue the development of the public open space; and

WHEREAS, Funding for the next phase of work was previously approved by resolution (Comm. 13E-25, dated June 21, 2001) and the County would like to amend that resolution to allow the County to enter into contracts with consultants and state and federal funding agencies,

NOW, THEREFORE, BE IT

RESOLVED, That this resolution amends Comm.13E-25, to authorize the County Executive to enter into contracts with the Erie County Industrial Development Agency, Buffalo Urban Development Corporation, the City of Buffalo, the State of New York and its agencies, and the U.S. Army Corps of Engineers and other federal agencies for the purpose of funding projects which will move the Union Ship Canal Public Open Space project forward; and be it further

RESOLVED, That the County Executive is authorized to enter into contracts with consultants and contractors for the purpose of design and construction of the Union Ship Canal Public Open Space; and be it further

RESOLVED, That the County Executive is authorized to enter into agreements for easements as may be necessary for infrastructure improvements such as sewers, utilities, bike trails, parking areas, and roadways; and be it further

RESOLVED, That the County Executive is authorized to enter into agreements for purposes of environmental remediation, indemnification or environmental covenants with the City of Buffalo, Buffalo Urban Development Corporation, Erie County Industrial Development Agency, the State of New York and its agencies; and be it further

RESOLVED, That the County Executive is the representative authorized to act in behalf of the County in all matters related to State Assistance under ECL Article 56, Title 5. The County Executive is also authorized to make application, execute the State Assistance Contract, submit project documentation, and otherwise act for the County's governing body in matters related to the project and to State Assistance; and be it further

I also certify that  
this resolution is still  
in effect as of April 23, 2008

  
Robert M. Graham  
Clerk  
April 23, 2008

  
KEVIN M. KELLEY  
Clerk of the Legislature of Erie County

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., January 20, 2005

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, *That at the 2nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twentieth day of January A.D., 2005, a Resolution was adopted, of which the following is a true copy:*

RESOLVED, That the County agrees that it will fund its portion of the cost of the project and the funds will be available to initiate the project's filed work within twelve months of written approval of its application by the Department of Environmental Conservation; and be it further

RESOLVED, That one certified copy of the authorization be prepared and sent to the Albany office of the New York Department of Environmental Conservation together with the Application for State Assistance; and be further

RESOLVED, That the source of funds will be remaining funds previous authorized by resolution Comm. 13E-25 in June, 2001, available in the approved 2001 Erie County Capital Budget; and be it

RESOLVED, That the Clerk of the Legislature be directed to send certified copies of this resolution to the County Executive; the Director of the Division of Budget, Management and Finance; the Comptroller; the Commissioner of the Department of Environment and Planning; and the County Attorney.

REFERENCE:       Comm. 30E-32  
AS AMENDED:     January 20, 2005

ATTEST



KEVIN M. KELLEY  
*Clerk of the Legislature of Erie County*