

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation
625 Broadway, 12th Floor, Albany, New York 12233-7011
P: (518) 402-9706 | F: (518) 402-9020
www.dec.ny.gov

JAN 21 2016

Onondaga County Industrial Development Agency (OCIDA)
Julie Cerio, Executive Director
333 West Washington Street, Suite 130
Syracuse, NY 13202

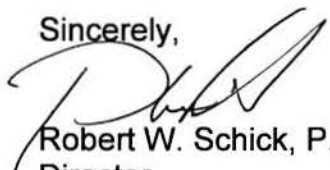
RE: Site Name: 800 Hiawatha Boulevard West (former Roth Steel)
Site No.: C734083
Location of Site: 800 Hiawatha Boulevard West, Onondaga County
Syracuse, New York

Dear Ms. Cerio:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the 800 Hiawatha Boulevard West (former Roth Steel) site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Joseph Sluzar, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 615 Erie Boulevard West, Syracuse, New York 13204, or by email at joseph.sluzar@dec.ny.gov

Sincerely,



Robert W. Schick, P.E.
Director

Division of Environmental Remediation

Enclosure

ec: Karen Cahill, Project Manager

cc: Joseph Sluzar, Esq.
A. Guglielmi, Esq. /M. Mastroianni



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C734083-01-16**

800 Hiawatha Boulevard West (former Roth Steel)

DEC Site No.: C734083

Located at: 800 Hiawatha Blvd. West
Onondaga County
Syracuse, NY 13204

Hereinafter referred to as "Site"

by:

Onondaga County Industrial Development Agency (OCIDA)
333 W. Washington Street, Suite 130, Syracuse, NY 13202

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation ("Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicant submitted an application received by the Department on October 22, 2015; and

WHEREAS, the Department has determined that the Site and Applicant are eligible to participate in the BCP.

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

I. Applicant Status

The Applicant, Onondaga County Industrial Development Agency (OCIDA), is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 23.900 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 114-02-20
Street Number: 712 Hiawatha Blvd W, Syracuse
Owner: Onondaga County Industrial Development Agency

Tax Map/Parcel No.: 114-02-17
Street Number: 884 Hiawatha Blvd W Rear At J, Syracuse
Owner: Onondaga County Industrial Development Agency

Tax Map/Parcel No.: 114-02-18
Street Number: 700 Hiawatha Blvd W, Syracuse
Owner: Onondaga County Industrial Development Agency

Tax Map/Parcel No.: 114-02-19
Street Number: 531 State Fair Blvd, Syracuse
Owner: Onondaga County Industrial Development Agency

III. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

Karen Cahill
New York State Department of Environmental Conservation
Division of Environmental Remediation
615 Erie Boulevard West
Syracuse, NY 13204
karen.cahill@dec.ny.gov

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
krista.anders@health.ny.gov

Joseph Sluzar, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
615 Erie Boulevard West
Syracuse, NY 13204
joseph.sluzar@dec.ny.gov

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

Onondaga County Industrial Development Agency (OCIDA)
Attn: Julie Cerio, Executive Director
333 W. Washington Street, Suite 130
Syracuse, NY 13202
juliecerio@ongov.net

Honora Spillane, Secretary and Treasurer (electronic copy only)
Onondaga County Industrial Development Agency (OCIDA)
333 W. Washington Street, Suite 130
Syracuse, NY 13202
hspillane@ongov.net

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

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

IV. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

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


C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

JAN 21 2016

THIS BROWNFIELD CLEANUP AGREEMENT IS
HEREBY APPROVED, Acting by and Through the
Department of Environmental Conservation as Designee
of the Commissioner,

By:



Robert W. Schick, P.E., Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Onondaga County Industrial Development Agency (OCIDA)

By: Julie A. Cerio

Title: Executive Director

Date: 1/14/16

STATE OF NEW YORK)
) ss:
COUNTY OF Onondaga

On the 14 day of January in the year 2016, before me, the undersigned, personally appeared Julie Cerio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) 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 upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Signature and Office of individual
taking acknowledgment

Honora K Spillane - Notary Public
Onondaga Cty, NY #02SP6246982
Commission Expires October 8, 2019

EXHIBIT A SITE MAP NO. 1

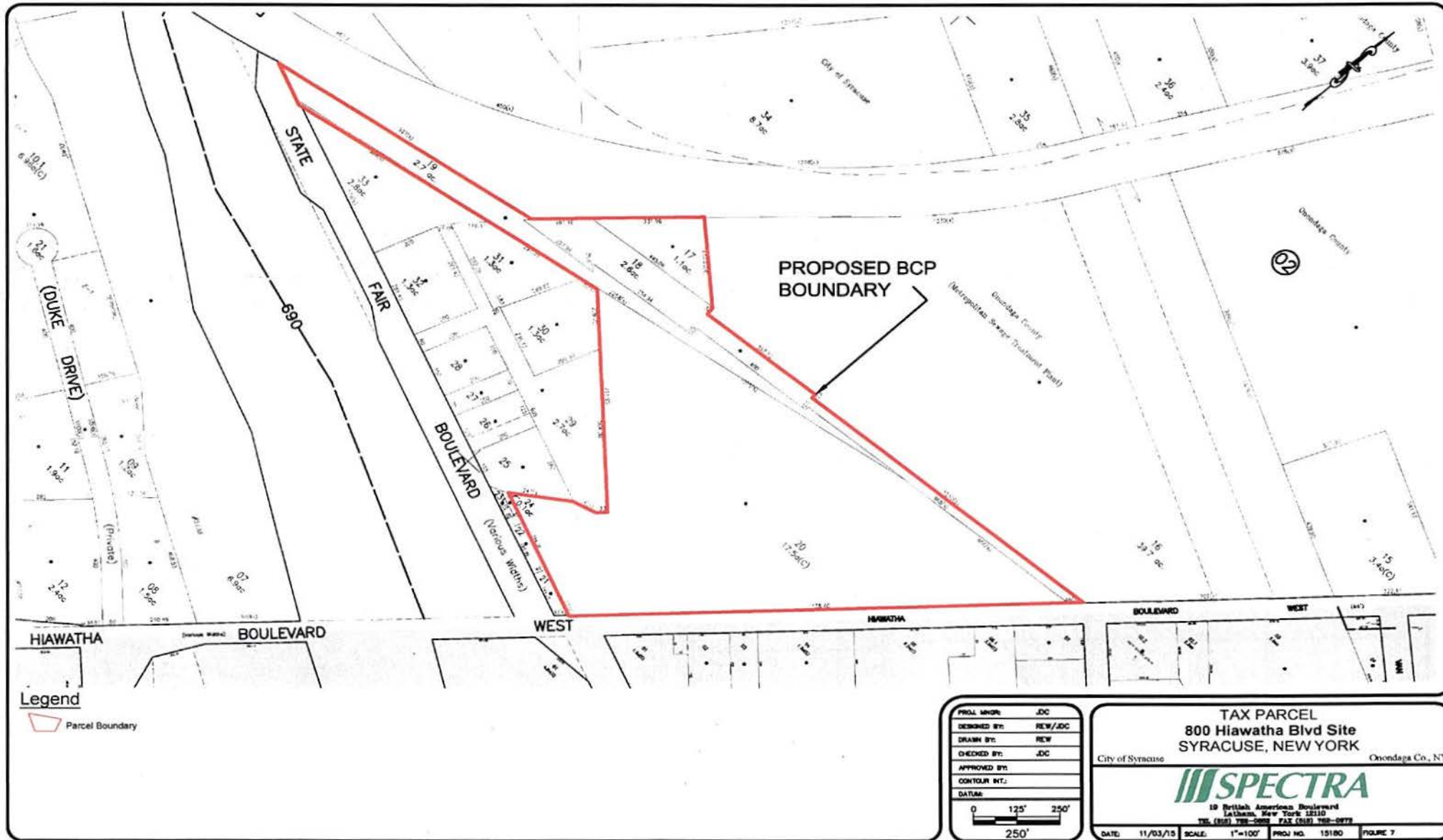
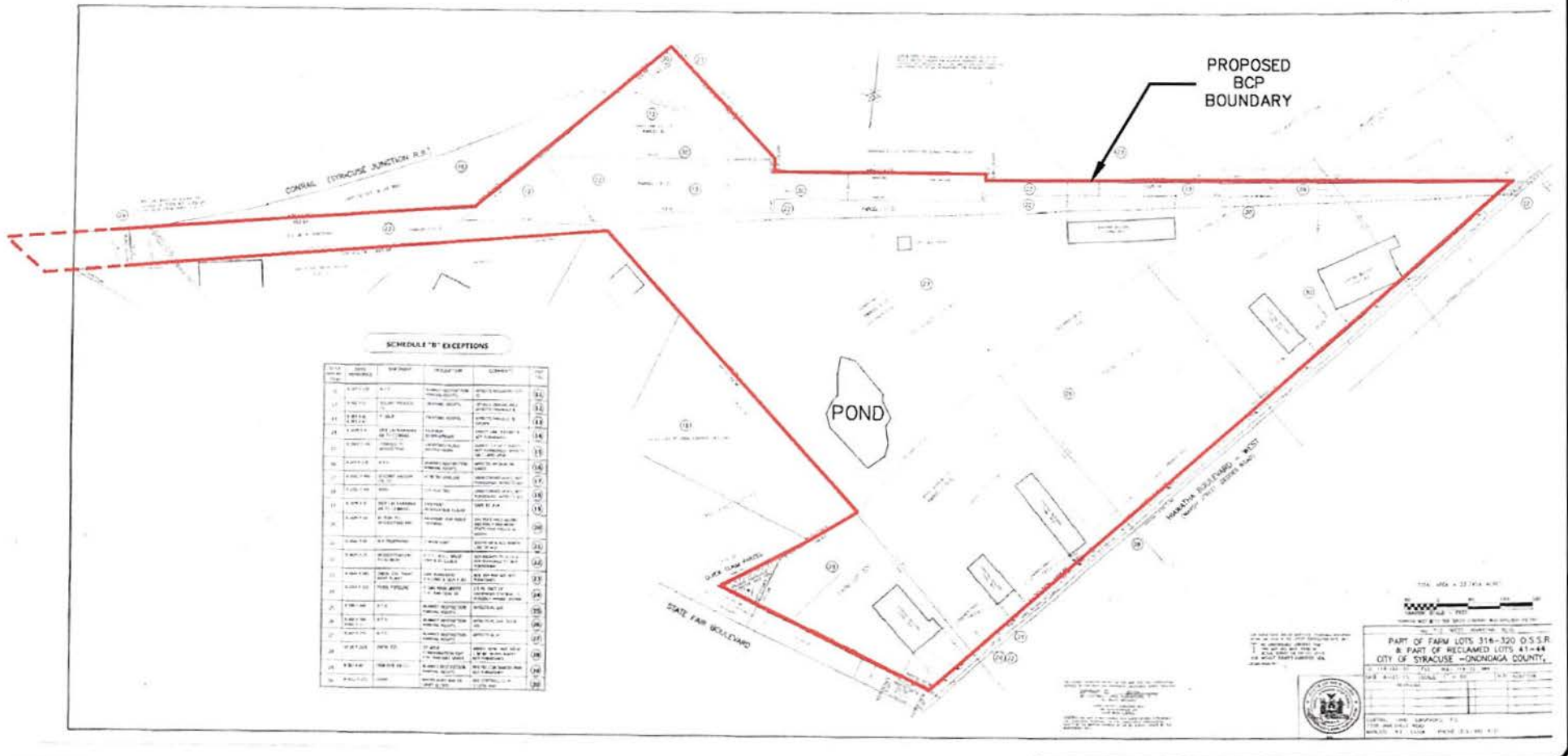


EXHIBIT A SITE MAP NO. 2



PROJ. MGR:	JDC
DESIGNED BY:	REW/JDC
DRAWN BY:	REW
CHECKED BY:	JDC
APPROVED BY:	
CONTOUR INT:	
DATUM:	
AS SHOWN	

SURVEY MAP
800 Hiawatha Blvd Site
SYRACUSE, NEW YORK

City of Syracuse Onondaga Co., NY

SPECTRA
 19 British American Boulevard
 Latham, New York 12110
 TEL (518) 798-0900 FAX (518) 798-0975

DATE: 11/04/15 SCALE: AS SHOWN PROJ. NO. 13180 FIGURE 8

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "BCA" or "Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of Environmental Conservation Law (ECL) § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, 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 within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

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

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any 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 to be conducted in accordance with current guidance, 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 in accordance with 6 NYCRR § 375-3.6(b) 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 the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with

the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. In addition, Applicant shall include with every report submitted to the Department a schedule for the submission of any subsequent work plan required to meet the requirements of ECL Article 27 Title 14. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may

request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final 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 preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this

Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs (Applicable only to Applicants with Participant Status)

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it

shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation

is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant 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 (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, 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 Applicant in connection with this Site, whether under this Agreement 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 and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant 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 Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that

such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

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

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement 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.



RESTATED BYLAWS
OF
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

ARTICLE I
THE AGENCY

Section 1. **Name.** The name of the Agency shall be "Onondaga County Industrial Development Agency."

Section 2. **Seal of Agency.** The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization.

Section 3. **Office of Agency.** The office of the Agency shall be at the Onondaga County 333 W. Washington Street, Suite 130, Syracuse, New York, or at such other address in the County of Onondaga as shall be determined by the Agency from time to time.

ARTICLE II
OFFICERS

Section 1. **Officers.** The officers of the Agency shall be a Chairman, a Vice Chairman, an Executive Director, a Secretary, a Treasurer, one or more Assistant Secretary(s) and an Assistant Treasurer.

Section 2. **Chair.** The Chairman shall be a member of the Agency and preside at all meetings of the Agency. The Chairman shall submit recommendations and such information as deemed pertinent concerning the business, affairs and policies of the Agency at each meeting. The Chairman shall appoint committee members and assign a chair for each committee.

Section 3. **Vice Chairman.** The Vice Chairman shall be a member of the Agency and perform the duties of the Chairman in the absence or incapacity of the Chairman. In the event of the resignation, removal or death of the Chairman, the Vice Chairman shall automatically succeed to the office of the Chairman and serve for the unexpired term of such office.

Section 4. **Secretary.** The Secretary may but need not be a member of the Agency. The Secretary shall keep all records of the Agency, shall act as Secretary at the meetings of the Agency, shall keep a record of all votes, shall record the proceedings of the Agency in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to this office. The Secretary shall have custody of the seal of the Agency and the power to affix such seal to all agreements, contracts, deeds, bonds or other evidences of indebtedness and all other instruments of the Agency authorized by the Agency to be executed and the power to attest (by manual or facsimile signature) such

seal. The Secretary may, in her discretion, delegate some or all of the Secretary's duties to the Assistant Secretary.

Section 5. **Assistant Secretary.** The Assistant Secretary may but need not be a member of the Agency. The Assistant Secretary shall perform the duties of the Secretary in the absence or incapacity of the Secretary or if so requested by the Secretary. In case of the resignation or death of the Secretary, the Assistant Secretary shall perform the duties of the Secretary until such time as the Agency shall appoint a new Secretary.

Section 6. **Treasurer.** The Treasurer shall not be a member of the Agency. The Treasurer shall be the Chief Financial Officer of the Agency. He shall have the care and custody of all funds of the Agency and shall deposit all such funds in the name of the Agency as the Agency may designate. Except as otherwise authorized by resolution of the Agency, the Treasurer shall sign all checks for the payment of money by the Agency pursuant to the direction of the Agency. Except as otherwise authorized by resolution of the Agency, all such checks shall be countersigned by the Chairman, the Vice-Chairman or the Executive Director. The Treasurer shall keep regular books of accounts showing receipts and expenditures. He shall render to the Agency at each regular meeting an account of the financial transactions and the current financial condition of the Agency.

Section 7. **Assistant Treasurer.** The Assistant Treasurer shall not be a member of the Agency. The Assistant Treasurer shall perform the duties of the Treasurer in the absence or incapacity of the Treasurer. In the event of the resignation or death of the Treasurer, the Assistant Treasurer shall perform the duties of the Treasurer until such time as the Agency shall appoint a new Treasurer.

Section 7A. **Executive Director.** The Executive Director shall be the Chief Executive Officer of the Agency and shall not be a member of the Agency. The Executive Director shall be appointed by the Agency, and shall have general supervision over the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Executive Director shall be charged with the management of all projects of the Agency. The Executive Director shall sign (manually or by facsimile signature) all agreements, contracts, deeds, bonds or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency, except as otherwise authorized or directed by resolution of the Agency.

Section 8. **Additional Duties.** In the absence or incapacity of the Treasurer and Assistant Treasurer, the other officers of the Agency shall have the care and custody of all funds of the Agency and the power to deposit the same in the name of the Agency in such bank or banks as the Agency may designate, and shall have the power to sign all checks of the Agency for the payment of money and the power to pay out and disburse such moneys under the direction of the Agency. In addition, all officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by its bylaws, or by its rules and regulations.

Section 9. **Appointment of Officers.** All officers of the Agency shall be appointed at the Annual Meeting of the Agency. All officers shall hold offices for one year or until their successors are appointed. If the term of an Agency member should terminate, his term of office as an officer shall also terminate. The Chief Executive Officer and the Chief Financial Officer shall not be members of the Agency.

Section 10. **Members of Agency.** There shall be seven members of the Agency who shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The term of the office of each member of the Agency shall be by appointment of the Onondaga County Legislature and each member shall continue to hold office until his successor is appointed and has qualified.

Section 11. **Vacancies.** Should any office except that of Chairman become vacant, the Agency shall appoint a successor at the next regular meeting, and such appointment shall be for the unexpired term of said office.

Section 12. **Additional Personnel.** The Agency may from time to time employ such personnel, as it deems necessary to exercise its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act, as amended, and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel shall be determined by the Agency subject to the laws of the State of New York.

ARTICLE III MEETINGS

Section 1. **Annual Meeting.** The Annual Meeting of the Agency shall be held in January at the regular meeting place of the Agency or such other time and place as the Agency shall determine.

Section 2. **Meetings.** Meetings of the Agency may be held at such times and places as from time to time may be determined by the Agency. The Chairman of the Agency may, when he deems it desirable, and shall, upon the written request of two members of the Agency, call a special meeting of the Agency. Notice of all meetings shall be **sent by United States mail, electronic mail**, or delivered to the residence or business address of each member, and to Agency Counsel, at least four days prior to the day the meeting is to occur. Whenever possible the notice shall set forth the matters to be considered at the meeting. Waivers of notice may be signed by any member or members who were not properly noticed.

Section 3. **Executive Sessions.** Upon motion identifying the general area(s) of the subject(s) to be considered and a majority vote of the membership, an executive session may be entered into and conducted by the Agency for the reasons enumerated in Public Officers Law § 105. During an executive session the Agency may take action on

the matters which are the subject of the executive session, however, no action by formal vote may be taken in an executive session to appropriate public moneys. Minutes must be taken of any action that is taken by formal vote, and must consist of a record or summary of a final determination and the vote thereon. The minutes do not need to include any matters not required to be made available to the public pursuant to FOIL.

Section 4. **Quorum**. At all meetings of the Agency, a majority of the Agency shall constitute a quorum for the purpose of transacting business; provided that a small number may meet and adjourn to some other time or until a quorum is obtained.

ARTICLE IV AMENDMENTS

Section 1. **Amendments to Bylaws**. The bylaws of the Agency may be amended with the approval of a majority of all the members of the Agency at a meeting, but no such amendment shall be adopted unless written notice thereof has been previously given to all members of the Agency.

ARTICLE V PROJECTS

Section 1. **Site of Agency Projects**. The Agency shall take local and state land use and environmental laws and regulations into consideration when reviewing and approving a project.

Section 2. **Compliance with Laws**. The Agency shall not approve the delivery of bonds for a project, which, at the time of such delivery is known by the Agency after reasonable inquiry to be in material violation of applicable zoning, environmental, labor or health laws or regulations, including applicable building and fire codes.

ARTICLE VI COMMITTEES

Section 1. **Governance Committee**. The Agency shall have a governance committee to be comprised of the Agency Chairman and two other members of the Agency appointed by the Chairman. Members of the Governance Committee shall be independent members as defined by the Public Authorities Accountability Act of 2005, as amended from time to time. It shall be the responsibility of the members of the Governance Committee to keep the members informed of current best governance practices; to review corporate governance trends, to update the Agency's corporate governance principles and to advise on the skills and experiences required of potential Agency members. The Governance Committee shall have such other purposes, powers, responsibilities and governance as provided in any charter adopted by the members of the Agency.

Section 2. **Audit Committee.** The Agency shall have an audit committee to be comprised of the Agency Chairman and two other members of the Agency appointed by the Chairman. Members of the Audit Committee shall be independent members as defined by the Public Authorities Accountability Act of 2005, as amended from time to time. It shall be the responsibility of the Audit Committee to recommend to the Agency the hiring of a certified independent accounting firm for the Agency, establish the compensation to be paid to the accounting firm and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. The Audit Committee shall have such other purposes, powers, responsibilities and governance as provided in any charter adopted by the members of the Agency.

Section 3. **Finance Committee.** The Agency shall have a finance committee to be comprised by the three members of the Agency appointed by the Chairman. Members of the Finance Committee shall be independent members as defined by the Public Authorities Accountability Act of 2009, as amended from time to time. It shall be the responsibility of the Finance Committee to review proposals for the issuance of debt for the Agency and make recommendations to the Agency regarding the issuance of such debt; seek any information it requires from the Agency and project applicants regarding the proposals for the issuance of debt and retain and consult with, at the Agency's expense, such outside counsel, experts and other advisors as the Finance Committee may deem appropriate. The Finance Committee shall have such other purposes, powers, responsibilities and governance as provided by any charter adopted by the members of the Agency.

Section 4 **Other Committees.** The Agency may designate from among its members other committees, each consisting of one or more members, and each of which, to the extent provided in the resolution or committee charter, shall have all the authority of the Agency members, except as otherwise provided by law.

Amended: July 22, 1985

Amended: September 11, 1996

Restated: January 14, 1997

Amended: May 12, 2005

Amended August 9, 2007

Amended April 9, 2009

Amended April 14, 2012

Amended December 11, 2012