



Department of  
Environmental  
Conservation

## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION TO AMEND BROWNFIELD CLEANUP AGREEMENT AND AMENDMENT

### PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

Check the appropriate box below based on the nature of the amendment modification requested:

☐ Amendment to [check one or more boxes below]

- ☐ Add
- ☐ Substitute
- ☐ Remove
- ☐ Change in Name

RECEIVED

AUG 08 2019

BUR. OF TECH. SUPPORT

applicant(s) to the existing Brownfield Cleanup Agreement [*Complete Section I-IV below and Part II*]

Does this proposed amendment involve a transfer of title to all or part of the brownfield site? ☒ Yes ☐ No

If yes, pursuant to 6 NYCRR Part 375-1.11(d), a Change of Use form should have been previously submitted. If not, please submit this form with this Amendment. See <http://www.dec.ny.gov/chemical/76250.html>

- ☒ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]
- ☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]
- ☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.
- ☒ Other (explain in detail below)

Please provide a brief narrative on the nature of the amendment:

This BCA Amendment is being submitted to clarify the lots numbers/addresses/owners of the Site. Below is the correct information:

- Tax Map ID 061.30-1-8.006, owned by Genesee Marina, Inc., 23.005 acres addressed as 118 Petten Street;
  - Tax Map ID 061.22-1-10, owned by Genesee Marina, Inc., 1.027 acres addressed as 115 Petten Street;
  - Tax Map ID 061.22-1-9, owned by the City of Rochester, 1.879 acres addressed as 105 Petten Street.
- Total BCP Site size = approximately 25.911 acres

**\*Please refer to the attached instructions for guidance on filling out this application\***

**Section I. Existing Agreement Information**

BCP SITE NAME: Genesee Marina

BCP SITE NUMBER: C828130

NAME OF CURRENT APPLICANT(S): Genesee Marina, Inc.

INDEX NUMBER OF EXISTING AGREEMENT: B807000508 DATE OF EXISTING AGREEMENT: 10.24.05

**Section II. New Requestor Information (if no change to Current Applicant, skip to Section V)**

NAME

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Is the requestor authorized to conduct business in New York State (NYS)?

☐

Yes

☐

No

- If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS.

NAME OF NEW REQUESTOR'S REPRESENTATIVE

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S CONSULTANT (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

NAME OF NEW REQUESTOR'S ATTORNEY (if applicable)

ADDRESS

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached?

☐ Yes☐ No

Describe Requestor's Relationship to Existing Applicant:

**RECEIVED**

AUG 08 2019

BUR. OF TECH. SUPPORT



**Section III. Current Property Owner/Operator Information (only include if new owner/operator or new existing owner/operator information is provided, and highlight new information)**

OWNER'S NAME (if different from requestor) City of Rochester (partial owner)

ADDRESS c/o Tim Curtin, City of Rochester Corporation Counsel, 30 Church Street

CITY/TOWN Rochester, NY

ZIP CODE 14614

PHONE (585) 428-6986

FAX

E-MAIL

OPERATOR'S NAME (if different from requestor or owner) Gibbs Marine Group, Inc. (current operator)

ADDRESS 118 Petten Street

CITY/TOWN Rochester, NY

ZIP CODE 14612

PHONE 585-663-8990

FAX

E-MAIL Steve@GibbsMarine.com

**Section IV. Eligibility Information for New Requestor (Please refer to ECL § 27-1407 for more detail)**

If answering "yes" to any of the following questions, please provide an explanation as an attachment.

1. Are any enforcement actions pending against the requestor regarding this site? ☐ Yes ☐ No
2. Is the requestor presently subject to an existing order for the investigation, removal or remediation relating to contamination at the site? ☐ Yes ☐ No
3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? ☐ Yes ☐ No  
Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator.
4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the subject law; ii) any order or determination; iii) any regulation implementing ECL Article 27 Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ☐ No
5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, Department assigned site number, the reason for denial, and other relevant information. ☐ Yes ☐ No
6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving the handling, storing, treating, disposing or transporting of contaminants? ☐ Yes ☐ No
7. Has the requestor been convicted of a criminal offense i) involving the handling, storing, treating, disposing or transporting of contaminants; or ii) that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration (as that term is used in Article 195 of the Penal Law) under federal law or the laws of any state? ☐ Yes ☐ No
8. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of the Department, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to the Department? ☐ Yes ☐ No
9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.9(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? ☐ Yes ☐ No
10. Was the requestor's participation in any remedial program under DEC's oversight terminated by DEC or by a court for failure to substantially comply with an agreement or order? ☐ Yes ☐ No
11. Are there any unregistered bulk storage tanks on-site which require registration? ☐ Yes ☐ No

THE NEW REQUESTOR MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL §27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ PARTICIPANT

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.

☐ VOLUNTEER

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

**If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer – be specific as to the appropriate care taken.**

Requestor's Relationship to Property (check one):

☐ Prior Owner ☒ Current Owner ☐ Potential /Future Purchaser ☐ Other partial

If requestor is not the current site owner, **proof of site access sufficient to complete the remediation must be submitted.** Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site Is this proof attached? ☒ Yes ☐ No

**Note: a purchase contract does not suffice as proof of access.**

#### Section V. Property description and description of changes/additions/reductions (if applicable)

ADDRESS 118 Petten Street

CITY/TOWN Rochester, New York

ZIP CODE 14612

TAX BLOCK AND LOT (TBL) (in existing agreement )

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
118 Petten Street		61.30	1	8	24.66



Check appropriate boxes below:



Changes to metes and bounds description or TBL correction



Addition of property (may require additional citizen participation depending on the nature of the expansion – see attached instructions)

Approximate acreage added: \_\_\_\_\_

ADDITIONAL PARCELS:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage
118 Petten Street		61.30	1	8.006	~23.005
115 Petten Street		61.22	1	10	~1.027
105 Petten Street		61.22	1	9	~1.879



Reduction of property

Approximate acreage removed: \_\_\_\_\_

PARCELS REMOVED:

Parcel Address	Parcel No.	Section No.	Block No.	Lot No.	Acreage

If requesting to modify a metes and bounds description or requesting changes to the boundaries of a site, please attach a revised metes and bounds description, survey, or acceptable site map to this application.

# Supplement to the Application To Amend Brownfield Cleanup Agreement And Amendment - Questions for Sites Seeking Tangible Property Credits in New York City ONLY.

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Requestor seeks a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Please answer questions below and provide documentation necessary to support answers.</b>	
1. Is at least 50% of the site area located within an environmental zone pursuant to Tax Law 21(6)? Please see <a href="#">DEC's website</a> for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the property upside down as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>From ECL 27-1405(31):</b></p> <p>"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.</p>	
3. Is the project an affordable housing project as defined below?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>From 6 NYCRR 375- 3.2(a) as of August 12, 2016:</p> <p>(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.</p> <p>(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.</p> <p>(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.</p> <p>(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.</p>	



## PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

Existing Agreement Information	
BCP SITE NAME: Genesee Marina	BCP SITE NUMBER: C828130
NAME OF CURRENT APPLICANT(S): Genesee Marina, Inc.	
INDEX NUMBER OF EXISTING AGREEMENT: B807000508	
EFFECTIVE DATE OF EXISTING AGREEMENT: 10.24.05	

### Declaration of Amendment:

By the Requestor(s) and/or Applicant(s) signatures below, and subsequent signature by the Department, the above application to amend the Brownfield Cleanup Agreement described above is hereby approved. This Amendment is made in accordance with and subject to all of the BCA and all applicable guidance, regulations and state laws applicable thereto. All other substantive and procedural terms of the Agreement will remain unchanged and in full force and effect regarding the parties to the Agreement.

Nothing contained herein constitutes a waiver by the Department or the State of New York of any rights held in accordance with the Agreement or any applicable state and/or federal law or a release for any party from any obligations held under the Agreement or those same laws.

Statement of Certification and Signatures: New Requestor(s) (if applicable)
<p>(Individual)</p> <p>I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: _____ Signature: _____</p> <p>Print Name: _____</p>
<p>(Entity)</p> <p>I hereby affirm that I am (title _____) of (entity _____); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.</p> <p>_____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.</p> <p>Date: _____ Signature: _____</p> <p>Print Name: _____</p>

**Statement of Certification and Signatures: Existing Applicant(s) (an authorized representative of each applicant must sign)**

(Individual)

I hereby affirm that I am a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

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

Print Name: \_\_\_\_\_

(Entity)

I hereby affirm that I am President (title) of Genesee Marina, Inc. (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. \_\_\_\_\_ My \_\_\_\_\_ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 8/7/19 Signature: 

Print Name: Steve Gibbs

**REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT**

Status of Agreement:



**PARTICIPANT**

A requestor who either 1) was the owner of the site at the time of the disposal of contamination or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of contamination.



**VOLUNTEER**

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the contamination.

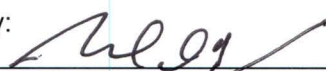
Effective Date of the Original Agreement: 10/24/05

Signature by the Department:

DATED: 10/24/19

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

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

  
Michael J. Ryan, P.E., Director  
Division of Environmental Remediation



**SUBMITTAL INFORMATION:**

- **Two (2)** copies, one hard copy with original signatures and one electronic copy in Portable Document Format (PDF) must be sent to:

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

---

**FOR DEPARTMENT USE ONLY**

**BCP SITE T&A CODE:** \_\_\_\_\_ **LEAD OFFICE:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

MONROE COUNTY CLERK'S OFFICE

Return To:  
BOX 36

GENESEE MARINA INC  
ROCHESTER CITY OF

Index DEEDS  
Book 10542 Page 0668  
No. Pages 0005  
Instrument DEED-OTHER  
Date : 11/08/2007  
Time : 11:59:00  
Control # 200711080475

TT# TT 0000 007004  
Employee ID RR40

<u>MORTGAGE TAX</u>			
TRANS TAX	\$	.00	
FILE FEE-S	\$	156.00	
FILE FEE-C	\$	9.00	
FILE FEE-S	\$	19.00	
FILE FEE-C	\$	8.00	
REC FEE	\$	15.00	
MISC FEE-C	\$	5.00	
	\$	.00	
	\$	.00	
Total: \$ 212.00			
MORTGAGE AMOUNT	\$	.00	
BASIC MORTGAGE TAX	\$	.00	
SPEC ADDIT MTG TAX	\$	.00	
ADDITIONAL MTG TAX	\$	.00	
Total	\$	.00	

STATE OF NEW YORK  
MONROE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

TRANSFER AMT  
TRANSFER AMT \$ .00  
TRANSFER TAX \$ .00

Cheryl Dinolfo  
Monroe County Clerk





P. 0.08

WARRANTY DEED WITH LIEN COVENANT

THIS INDENTURE, made the 7<sup>th</sup> day of November, 2007

BETWEEN

GENESEE MARINA, INC., with an address at 118 Petten Street, Rochester, New York 14612

(the "Grantor"), and

CITY OF ROCHESTER, with an address of 30 Church Street, Rochester, New York 14614

(the "Grantee")

WITNESSETH that the Grantor, in consideration of **Two Hundred Seventy-four Thousand and 00/100 Dollars (\$274,000.00)** lawful money of the United States and other good and valuable consideration, paid by the Grantee, does hereby grant and release unto the Grantee, its successors and assigns forever,

See attached Schedule A

TOGETHER WITH the right to use the easement and right of way for ingress egress and utility purposes (**35.00 feet wide**) granted by The New York Central Railroad Company to 18 Petten Street Extension, Inc by instrument dated March 19, 1964 and recorded March 23, 1964 in the Monroe County Clerk's Office in **Liber 3545 of Deeds at Page 375**, ("the Easement Appurtenant") more particularly bounded and described as follows

Beginning at the point of intersection of the easterly right-of-way line of lands now or formerly of CSX Railroad with the northerly property line of lands now or formerly of Genesee Marina, Inc , c/o Donald Suhr being a point in the northerly line of Petten Street (extended), and running

- (1) Thence southerly along the westerly line of said premises now or formerly of Genesee Marina, Inc , c/o Donald Suhr, thirty-five (35) feet to the southerly line of Petten Street (extended),
- (2) Thence westerly, along the southerly line of Petten Street (extended) one hundred thirty five (135) feet, more or less , to the westerly boundary of lands now or formerly of CSX Railroad,
- (3) Thence northerly, along the westerly line of said lands now or formerly of CSX Railroad thirty-five (35) feet to the intersection of the said westerly line of lands now or formerly of CSX Railroad with the northerly line of Petten Street,
- (4) Thence easterly, along the northerly line of Petten Street (extended) one hundred thirty five (135) feet, more or less to the point and place of beginning

TOGETHER WITH the right to use the easement and right of way for ingress egress and utility purposes (**100.00 feet wide**) reserved to Genesee Marina, Inc in the deed from Genesee Marina, Inc to the City of Rochester dated May 24, 2005 and recorded in the Monroe County Clerk's Office on May 27, 2005 in Liber 10131 of Deeds at page 22 and by Correction Deed dated June 14, 2006 and recorded in the Monroe County Clerk's Office on June 27, 2006 in Liber 10317 of Deeds, at page 531 over the following described parcel

Beginning at the point of intersection of the easterly right-of-way line of lands now or formerly of CSX Railroad with the northerly property line of lands now or formerly of Genesee Marina, Inc , c/o Donald Suhr, thence

R/R Box 36 SCS

2007 11 07  
11:58 AM  
JUN 11 2007

- 1) S 63° 14' 35" E, along said northerly property line of lands now or formerly of Genesee Marina, Inc , c/o Donald Suhr, a distance of 52 07 feet to a point, thence
- 2) Southwesterly, along the easterly boundary of the lands conveyed to the Grantee herein, a distance of 100 feet to a point, thence
- 3) N 63° 14' 35" W a distance of 52 07 feet to a point, thence
- 4) Northeasterly along the western boundary of the lands conveyed to the Grantee herein a distance of 100 00 feet, more or less, to the point of beginning

**EXCEPTING AND RESERVING** to the Grantor, its successors and assigns, a permanent easement for ingress, egress and utility purposes, more particularly bounded and described as follows Beginning at the said northeast corner of Lot R-1 of the Genesee Riverway Trail Resubdivision, said corner being the Point or Place of Beginning of the hereinafter described ingress, egress and utility easement; thence

- 1) S 09° 51' 30" E, a distance of 49 35 feet to a point, thence
- 2) S 06° 17' 00" W, a distance of 167 64 feet to the northwest corner of said Lot AR-2D, thence
- 3) S 13° 21' 00" W, along the westerly line of said Lot AR-2D, a distance of 341 79 feet to a point, thence
- 4) N 08° 37' 30" E, a distance of 245 93 feet to a point, thence
- 5) N 06° 17' 00" E, a distance of 174 03 feet to a point, thence
- 6) N 09° 51' 30" W, a distance of 40 54 feet to a point on the easterly line of said Lot R-1, thence
- 7) Northeasterly, along said easterly line of Lot R-1, on a curve to the right having a radius of 11,357 19 feet, a distance of 100 00 feet to the said northeast corner of Lot R-1, said corner being the Point or Place of Beginning

**BEING AND INTENDING TO CONVEY** a portion of the premises conveyed to the Grantor by Warranty Deed dated April 2, 1968 and recorded April 3, 1968 in Liber 3890 of Deeds page 449 in the Monroe County Clerk's Office

Subject to all covenants, easements and restrictions of record if any

<b>Tax Account No.:</b>	<b>061.30-1-8.4 (portion)</b>
<b>Tax Mailing Address:</b>	<b>30 Church Street, Rochester, NY 14614</b>
<b>Property Address:</b>	<b>105 Petten Street, Rochester, NY 14612</b>

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, the heirs or successors and assigns forever

AND said Grantor covenants as follows

FIRST, that Grantee shall quietly enjoy the said premises,

SECOND, that Grantor will forever WARRANT the title to said premises


THIRD, That in Compliance with Section 13 of the Lien Law, Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to



the payment of the cost of the improvement before using any part of the total of the same for any other purpose


IN WITNESS WHEREOF, the Grantor has executed this indenture on the day and year first above written

**GENESEE MARINA, INC.**

By  UP  
Name Donald A. Suhr Jr.  
Title Vice President

STATE OF NEW YORK)  
COUNTY OF MONROE) SS

On the 7<sup>th</sup> day of November, 2007 before me, the undersigned, a Notary Public in and for said State, personally appeared Donald A. Suhr, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument

  
\_\_\_\_\_  
Notary Public

ALAN J. KNAUF  
Notary Public, State of New York  
Monroe County  
My Commission Expires May 30, 2009

## SCHEDULE A

### LOT AR-2A #105 PETTEN STREET

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Rochester, County of Monroe, State of New York, bounded and described as follows Commencing at the intersection of the easterly ROW line of River Street (66' ROW) and the northerly ROW line of Petten Street (49 5' ROW), said intersection being the Point or Place of Commencement, thence

A) S 63° 14' 07" E, along said northerly ROW line of Petten Street, a distance of 424 78 feet to the northeast corner of Lot R-1 of the Genesee Riverway Trail Resubdivision, as shown on a map filed in the Monroe County Clerk's Office in Liber 328 of Maps, Page 21, said corner also being the northwest corner of the hereinafter described Lot AR-2A and being the Point or Place of Beginning, thence

1) S 63° 14' 07" E, along the northerly line of said Lot AR-2A, a distance of 144 64 feet, more or less, to the westerly bank of the Genesee River and being the northeast corner of said Lot AR-2A, thence

2) Southwesterly, along said bank of the Genesee River, a distance of 175 feet, more or less, to a point The direct tie line between the terminus of Course 1 and Course 2 is S 06° 52' 00" W and a distance of 175 00 feet, thence

3) N 78° 41' 30" W, a distance of 120 46 feet, more or less, to a point, thence

4) S 13° 21' 00" W, a distance of 441 92 feet to the southeast corner of said Lot AR-2A, thence

5) N 78° 41' 30" W, along the southerly line of said Lot AR-2A, a distance of 140 87 feet to the southwest corner thereof and the easterly line of said Lot R-1, thence

6) Northeasterly, along said easterly line of Lot R-1, on a curve to the right having a radius of 11,357 19 feet, a distance of 666 41 feet to the northwest corner of said Lot AR-2A, said corner being the Point or Place of Beginning

Containing 1 879 acres, more or less

BEING AND INTENDING TO DESCRIBE a parcel shown as Lot AR-2A, as shown on a map entitled Municipal Subdivision No 1-2006, prepared by Jacek M Szymanski, L S , dated July 24, 2006

## **ACCESS AND LIABILITY RELEASE AND INDEMNIFICATION AGREEMENT**

This Access and Liability Release and Indemnification Agreement ("Agreement") is dated as of the 6<sup>th</sup> day of August, 2019, by and between Genesee Marina, Inc. ("Genesee Marina"), a domestic business corporation having its principal office at 118 Petten Street, Rochester, New York 14612, and the City of Rochester, having its principal office at 30 Church Street, Rochester, New York 14614 ("City").

### **WITNESSETH**

**WHEREAS**, Genesee Marina is a Participant in the Brownfield Cleanup Program ("BCP") for the Genesee Marina Site, located at 118, 115, and 105 Petten Street (Tax Map Identification Numbers 061.30-1-8.006, 061.22-1-10, 061.22-1-9, respectively), in the City of Rochester ("Site"), and totaling approximately 25.911 acres, as detailed in the attached "Schedule A";

**WHEREAS**, Genesee Marina entered into a Brownfield Cleanup Agreement with the New York State Department of Environmental Conservation ("NYSDEC") on October 24, 2005, which has been amended by an Amendment dated April 16, 2018, based on the amendments to BCP under Environmental Conservation Law, Article 27, Title 14, so that Genesee Marina has until December 31, 2026 to receive a Certificate of Completion ("COC") for the Site;

**WHEREAS**, a Decision Document was issued for the Site on March 2012, and a Remedial Action Work Plan was approved by NYSDEC on June 26, 2013, detailing the remediation to be completed at the Site ("Work");

**WHEREAS**, the City purchased 105 Petten Street in the City of Rochester (Tax Map Identification Number 061.22-1-10) ("105 Petten") on November 7, 2007, pursuant to a Warranty Deed recorded in the Monroe County Clerk's Office on November 8, 2007, Control Number 200711080475;

**WHEREAS**, upon Genesee Marina's completion of the Work at the BCP Site to the satisfaction of NYSDEC and the recording an Environmental Easement imposing post-remediation site management controls, NYSDEC will issue a COC for the Site, including 105 Petten Street;

**WHEREAS**, according to NYSDEC, the BCP requires Genesee Marina to enter into an access agreement with any owner of the Site to ensure that it has full access to the entire Site and is able to fulfill its obligations under the BCP;

**WHEREAS**, as part of the Work to be performed under the BCP, Genesee Marina obtained various permits from the NYSDEC to stabilize approximately 4,100 linear feet of eroding banks of the Genesee River through the placement of stone rip rap consistent with the BCP, Permit Identification Nos. 8-2614-00598/00022, 8-2614-00598/00023, and 8-2614-00598/00024, which expire on December 31, 2021 (the "Permits");

**WHEREAS**, the Permits state that any activities to be performed on 105 Petten Street



“may not commence until the permittee takes ownership or obtains written authorization from the City”;

**WHEREAS**, Genesee Marina and the City wish to formalize their oral agreement as to access at 105 Petten Street, in order to obtain the COC from the NYSDEC for the Site;

**WHEREAS**, in return for the City’s permission to access 105 Petten Street and perform the Work on the Site (, Genesee Marina is willing to release, defend, indemnify, hold harmless and insure the City, as described more fully below.

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants set forth herein, the City and Genesee Marina hereby covenant and agree as follows:

**I. COVENANTS**

1. City grants Genesee Marina and its employees, consultants, contractors, subcontractors and agents (collectively, the “Licensees”), a temporary license for access to 105 Petten Street for the purpose of performing the Work, which will expire on December 31, 2026.
2. Genesee Marina shall abide, and cause the other Licensees to abide, by the following requirements for the Work:
  - a. provide reasonable (which shall in no event be less than five (5) business days) prior written notice of the proposed time and schedule of Work activities to the City, by email to Ann Spaulding, at [Ann.Spaulding@CityofRochester.Gov](mailto:Ann.Spaulding@CityofRochester.Gov), Joseph J. Biondolillo at [Joseph.Biondolillo@CityofRochester.Gov](mailto:Joseph.Biondolillo@CityofRochester.Gov), and Thomas J. Warth at [Tom.Warth@CityofRochester.Gov](mailto:Tom.Warth@CityofRochester.Gov), and to any additional or replacement notice recipient subsequently designated by the City;
  - b. prior to accessing 105 Petten Street for the Work, provide the City with proof that all Licensees have procured and will maintain during the Work insurance coverage meeting the requirements set forth in Schedule “B” to this Agreement;
  - c. give notice of its contemplated entry and activities to any relevant utility authority or company and locate, identify and avoid all subsurface improvements including, without limitation, all water, gas, electric and other utility lines, in compliance with all applicable law, or, if more stringent, as objectively considered to be reasonable or prudent in accordance with the practices, methods and standards of performance within the relevant business or profession and the exercise of reasonable professional judgment;
  - d. permit, and provide full opportunity for the City or its consultants, contractors and agents to observe all Work activities;
  - e. upon prior written request and as reasonably instructed by the City, deliver to the City or its designated consultant, contractor, or agent, split samples of any drill cuttings, plugs, borings, samplings, soil and other materials taken or withdrawn from 105 Petten Street or adjoining areas during Work;
  - f. conduct the Work in compliance with all applicable environmental, health and safety laws, including, without limitation, any administered by NYSDEC, the United States Environmental Protection Agency, or the Occupational Safety and Health Administration,



- or, if more stringent, as objectively considered to be reasonable or prudent in accordance with the practices, methods and standards of performance within the relevant business or profession and the exercise of reasonable professional judgment;
- g. keep 105 Petten Street free from deposits or spills of fuel, and any hazardous, noxious or objectionable materials and debris as a result of the implementation of the Work and remove in the same business day all samples withdrawn from 105 Petten Street and, except for any split samples delivered to the City or its consultant, properly dispose of off-site all such samples and all other material withdrawn from 105 Petten Street or generated by such sampling activities, including, without limitation, soil, groundwater and surface water;
  - h. restore in a good and workmanlike manner the portions of 105 Petten Street effected by such entry and activities to substantially the same condition, order and repair as existed prior to such entry and activities, except for the installation of a soil cover, which shall be installed in a good and workmanlike manner and in accordance with specifications approved by NYSDEC and the City;
  - i. not cause or allow any Work-related liens against 105 Petten Street, and if it any such lien is imposed, cause the discharge thereof within thirty (30) business days thereafter;
  - j. promptly and in no event later than five (5) business days after their availability, deliver to the City a copy of all studies, reports, assessments, analyses, test results and other or related information and documentation arising from or related to the Work;
  - k. promptly and no later than five (5) business days after receipt, deliver to the City any correspondence from the NYSDEC regarding the Work, the process or timing for obtaining a Certificate of Completion, or the issuance of the Certificate of Completion;
  - l. permit, and provide full opportunity for, the City and/or its designated representative, to meet with or otherwise contact Genesee Marina's environmental consultant to discuss the Work (and Genesee Marina shall be responsible for all fees, costs or expenses of its consultant in connection therewith);
  - m. refrain from proposing to NYSDEC for 105 Petten Street any investigation or remedial program activity that materially adds to or modifies the Work activities already approved by NYSDEC until after Genesee Marina has provided the proposal to the City and allowed the City at least five (5) business days to comment and consult on the proposal with Genesee Marina, its consultant and/or its representatives;
  - n. shall not perform any work on 105 Petten Street other than that which has been described as Work by this Agreement, unless the City has provided written permission to do so after Genesee Marina has given the City a detailed description of the proposed additional or modified activities, provided, however, that such permission should not be unreasonably withheld.
3. Genesee Marina hereby releases, and shall defend, indemnify and hold harmless the City, its agencies, officials, contractors and employees, from and for any claim, loss or damage, including without limitation, for personal injury, property damage, or environmental response costs related to or resulting from the performance of the Work, except to the extent that such claim, loss or damage results from the wrongful action or inaction of the City, or its officials, contractors and employees.

## II. GENERAL PROVISIONS



1. No provisions of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.
2. This Agreement is binding upon and inures to the benefit of City and Genesee Marina and their respective successors, transferees and assigns.
3. Genesee Marina hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by the City on this Agreement, any and every right it may have to a trial by jury.
4. This Agreement and the rights and obligations of the parties under this Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to the interpretation, construction and enforcement of contracts and indemnities (without giving effect to New York's principles of conflicts law).
5. Both the City and Genesee Marina irrevocably submit to the exclusive jurisdiction of any New York State court sitting in the County of Monroe, State of New York, over any suit, action or proceeding arising out of or relating to this Agreement.
6. This Agreement contains the entire agreement of the parties regarding access to 105 Petten Street, and there are no terms, statements or representations made or relied upon not contained in this Agreement. This Agreement can only be modified by a writing signed by the parties hereto.
7. This Agreement shall supersede any agreements previously entered into among, by and between the parties and shall constitute the sole Agreement for the purpose of Genesee Marina's lawful access to 105 Petten Street.
8. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
9. Each individual and entity executing this Agreement hereby represents and warrants that he, she, or it has the capacity set forth on the signature page hereof with full power and authority to bind the party on whose behalf he, she, or it is executing this Agreement to the terms of this Agreement. The parties have read and understood this Agreement and have had the opportunity to consult with legal counsel with respect to this Agreement.
10. This Agreement may be signed in counterparts, each of which shall constitute an original and all of which together shall be deemed a single document.



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

GENESEE MARINA, INC.

By: Steve Gibbs  
Steve Gibbs  
President

STATE OF NEW YORK     )  
  )s.s.:  
COUNTY OF MONROE     )

On June 25, 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Steve Gibbs personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Anthony A. Rothberg  
Notary Public

ANTHONY A. ROTHBERG  
Notary Public, State of New York  
Reg. No. 01RO6112875  
Qualified in Monroe County  
Commission Expires: 07/12/ 20

[Remainder of this page intentionally left blank]

CITY OF ROCHESTER

By: [Signature]  
[name] Timothy R. Carlin  
[title] Corporate Counsel

STATE OF NEW YORK     )  
                                      )s.s.:  
COUNTY OF MONROE     )

On August 6, 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Timothy R. Carlin personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

THOMAS J. WARTH  
Notary Public, State of New York  
Commissioned in Monroe County  
No. 02WA6251356  
Commission Expires Nov. 14, 2019

[Remainder of this page intentionally left blank]

## SCHEDULE A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Rochester, County of Monroe, State of New York, bounded and described as follows Commencing at the intersection of the easterly ROW line of River Street (66' ROW) and the northerly ROW line of Petten Street (49 5' ROW), said intersection being the Point or Place of Commencement, thence

A) S 63° 14' 07" E, along said northerly ROW line of Petten Street, a distance of 424 78 feet to the northeast corner of Lot R-1 of the Genesee Riverway Trail Resubdivision, as shown on a map filed in the Monroe County Clerk's Office in Liber 328 of Maps, Page 21, said corner also being the northwest corner of the hereinafter described Lot AR-2A and being the Point or Place of Beginning, thence

1) S 63° 14' 07" E, along the northerly line of said Lot AR-2A, a distance of 144 64 feet, more or less, to the westerly bank of the Genesee River and being the northeast corner of said Lot AR-2A, thence

2) Southwesterly, along said bank of the Genesee River, a distance of 175 feet, more or less, to a point The direct tie line between the terminus of Course 1 and Course 2 is S 06° 52' 00" W and a distance of 175 00 feet, thence

3) N 78° 41' 30" W, a distance of 120 46 feet, more or less, to a point, thence

4) S 13° 21' 00" W, a distance of 441 92 feet to the southeast corner of said Lot AR-2A, thence

5) N 78° 41' 30" W, along the southerly line of said Lot AR-2A, a distance of 140 87 feet to the southwest corner thereof and the easterly line of said Lot R-1, thence

6) Northeasterly, along said easterly line of Lot R-1, on a curve to the right having a radius of 11,357 19 feet, a distance of 666 41 feet to the northwest corner of said Lot AR-2A, said corner being the Point or Place of Beginning

Containing 1 879 acres, more or less

BEING AND INTENDING TO DESCRIBE a parcel shown as Lot AR-2A, as shown on a map entitled Municipal Subdivision No 1-2006, prepared by Jacek M Szymanski, L S , dated July 24, 2006



## **SCHEDULE B – LICENSEE INSURANCE REQUIREMENTS**

### **General Liability Insurance**

Each Licensee shall obtain at its own expense general liability insurance for protection against claims of personal injury, including death, or damage to property, arising out of the Work. The amount of said insurance coverage shall in the amount Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured. The Licensee shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, the Licensee shall provide a listing of any and all exclusions under said policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

### **Pollution Legal Liability Insurance.**

Each Licensee shall obtain Pollution Legal Liability insurance on an occurrence basis (or, if on a claims made basis, have a term that extends for at least six (6) years after completion of the Work activities), with limits of at least Two Million Dollars per occurrence and Four Million Dollar policy term aggregate for bodily injury, property damage, cleanup costs and claim expenses, arising at or emanating from the City Property arising from Work activities. Such insurance shall provide liability coverage, including for claims of third parties, for both sudden and gradual releases of pollutants. The insurance shall name the City as additional insured, be evidenced by a certificate of a financially responsible company, list all exclusions, stipulate to advance notice of a cancellation or change, and not exclude municipal operations or property from coverage, all in the same manner as is required for General Liability Insurance herein.

### **Workers' Compensation and Disability Benefits Insurance**

Genesee Marina shall require all Licensees to keep insured, during the life of this Agreement, all employees of said Licensee as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York. In the event that Genesee Marina hires its own employees to do any Work called for by this Agreement, then the Genesee Marina agrees to so insure its own employees. Genesee Marina shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage has been secured. In the alternative, Genesee Marina shall provide proof of self-insurance or shall establish that Workers' Compensation and/or Disability Benefits coverage is not required by submitting a completed New York State Workers' Compensation Board's form WC/DB-100.

### Professional Liability Insurance

Each professional Licensee shall procure at its own expense professional liability insurance for Work to be performed pursuant to this Agreement, insuring such Licensee against malpractice or errors and omissions of the Licensee, in the amount of One Million Dollars. The Licensee shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. The certificate shall contain a thirty (30) day cancellation clause which shall provide that the City shall be notified not less than thirty (30) days prior to the cancellation, assignment or change of the insurance policy. The Consultant shall also give at least thirty (30) days' notice to the City of such cancellation, amendment or change, and of any lapse of insurance coverage under this Agreement.