

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

APR 06 2015

City of Rochester
Joseph J. Biondolillo
City Hall, 30 Church Street, Room 300B
Rochester, NY 14614

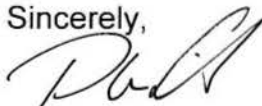
RE: Site Name: Portion of Former Vacuum Oil Refinery
Site No.: C828190
Location of Site: Cottage Street/Riverview Place/Violetta Street/South Plymouth Avenue, Monroe County, Rochester, New York

Dear Mr. Biondolillo:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Portion of Former Vacuum Oil Refinery Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, John Byrne, Esq., NYS Department of Environmental Conservation, Office of General Counsel, Office of General Counsel, 6274 East Avon-Lima Road, Avon, New York 14414, or by email at james.mahoney@dec.ny.gov.

Sincerely,



Robert W. Schick, P.E.

Director

Division of Environmental Remediation

Enclosure

ec: Frank Sowers, Project Manager

cc: J. Mahoney, 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.: C828190-02-15**

Portion of Former Vacuum Oil Refinery

DEC Site No.: C828190

Located at: Cottage Street/Riverview Place/Violetta Street/South Plymouth Avenue
Monroe County
Rochester, NY 14608

Hereinafter referred to as "Site"

by:

City of Rochester

City Hall, 30 Church Street, Room 300B, Rochester, NY 14614

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation (the "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 July 21, 2014; 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, City of Rochester, 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 15.406 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 136.21-1-1
Street Number: 1 Cottage Street, Rochester
Owner: City of Rochester

Tax Map/Parcel No.: 136.21-1-3
Street Number: 13 Cottage Street, Rochester
Owner: City of Rochester

Tax Map/Parcel No.: 136.21-1-4
Street Number: 31 Cottage Street, Rochester
Owner: City of Rochester

Tax Map/Parcel No.: 135.28-2-45
Street Number: 69 Cottage Street, Rochester
Owner: City of Rochester

Tax Map/Parcel No.: 135.28-2-44
Street Number: 75 Cottage Street, Rochester
Owner: City of Rochester

Tax Map/Parcel No.: 136.21-1-2
Street Number: 100 Riverview Place, Rochester
Owner: City of Rochester

Tax Map/Parcel No.: 121.70-1-39.001
Street Number: 102 Violetta Street, Rochester
Owner: City of Rochester

Tax Map/Parcel No.: 121.77-1-86
Street Number: 1320 South Plymouth Avenue, Rochester
Owner: City of Rochester

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

City of Rochester
Attn: Joseph J. Biondolillo
City Hall, 30 Church Street, Room 300B
Rochester, NY 14614
biondj@cityofrochester.gov

IV. 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:

Frank Sowers
New York State Department of Environmental Conservation
Division of Environmental Remediation
6274 East Avon-Lima Road
Avon, NY 14414
frank.sowers@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

James Mahoney, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
6274 East Avon-Lima Road
Avon, NY 14414
james.mahoney@dec.ny.gov

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

City of Rochester
Attn: Joseph J. Biondolillo
City Hall, 30 Church Street, Room 300B
Rochester, NY 14614
biondj@cityofrochester.gov

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.

V. 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:

APR 06 2015

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 

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

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.

By:

Date: 3-26-15

STATE OF NEW YORK)
) ss:
COUNTY OF Monroe)

On the 26th day of March in the year 2015, before me, the undersigned, personally appeared T. Andrew Brown, 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 and Office of individual
taking acknowledgment

THOMAS J. WARTH
Notary Public, State of New York
Commissioned in Monroe County
No. 02WA6251356
Commission Expires Nov. 14, 2015

EXHIBIT A

SITE MAP

FIGURE 1



LEGEND

- FORMER VACUUM OIL REFINERY SITE AREA (27 acres)
- CITY-OWNED PARCEL (15 acres)

NOTES:

1. TAX PARCELS PROVIDED BY MONROE COUNTY DES, MARCH 2010.
2. PARCEL OWNERSHIP VERIFIED THROUGH THE CITY OF ROCHESTER PROPERTY INFORMATION WEBSITE ON MAY 11, 2010. (<http://www.cityofrochester.gov/OIS/>)
3. AERIAL IMAGERY PROVIDED BY NYS OIS CLEARINGHOUSE, DATED SPRING 2012.
4. 1320 S. PLYMOUTH AVENUE WAS FORMERLY IDENTIFIED AS 1315 S. PLYMOUTH AVENUE AND TAX PARCEL 135-35-1-10.004.

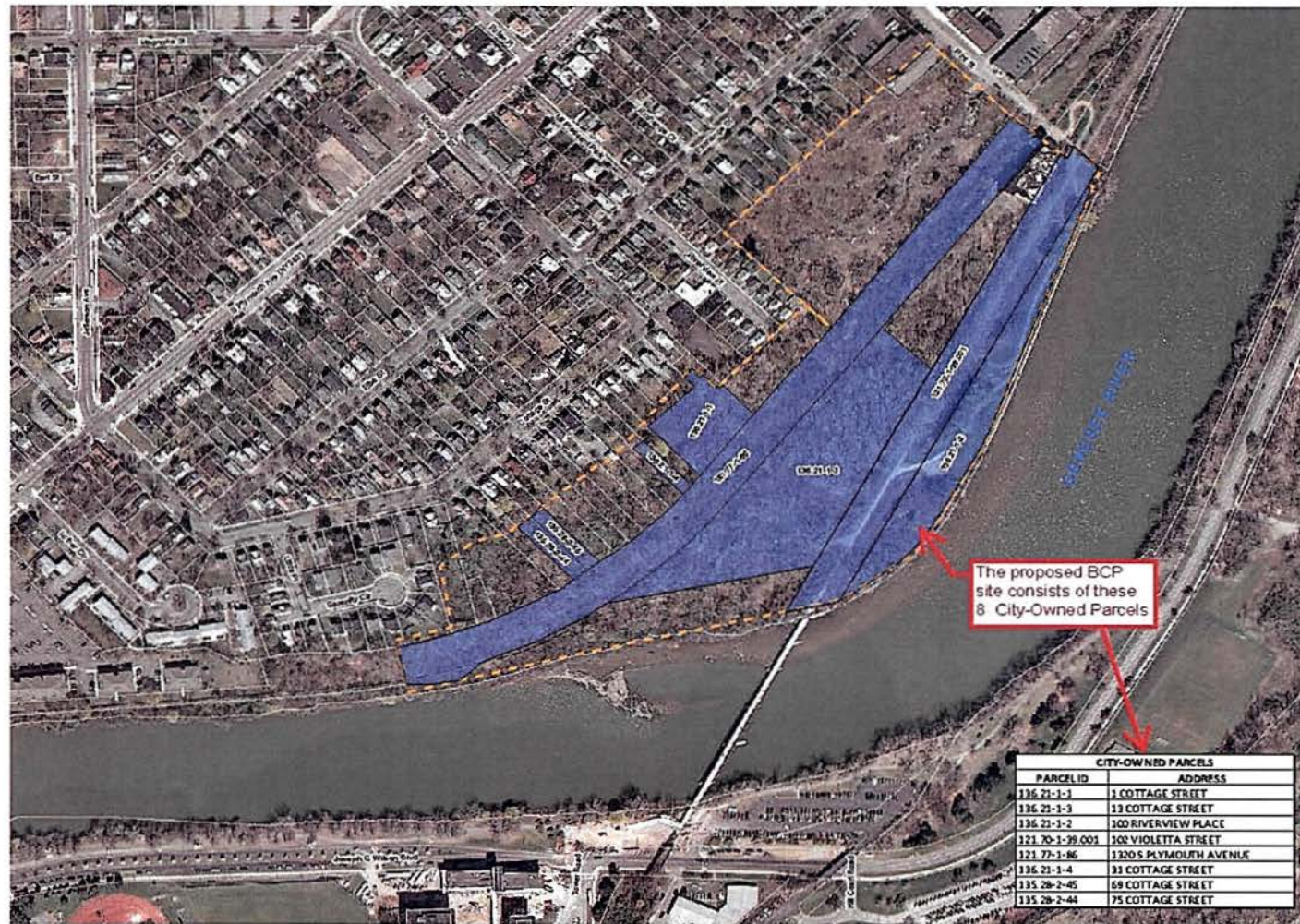
**BROWNFIELD CLEANUP
PROGRAM APPLICATION
CITY OF ROCHESTER
PORTION OF FORMER
VACUUM OIL REFINERY
1 AND 13 COTTAGE STREET,
100 RIVERVIEW PLACE,
102 VIOLETTA STREET, AND
PORTION OF 1320 S. PLYMOUTH
AVENUE ROCHESTER,
NEW YORK**

SITE LOCATION



JUNE 2014
11062 JAW/ES

OBRIEN & GERE



This document was developed in color. Reproduction in B&W may not represent the data as intended.

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this 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 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. 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

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 New York State Department of Environmental Conservation 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. The Department shall provide written notification to the Applicant 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 § 27-1423 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 this Agreement.

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, 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 represent payment for or reimbursement of State costs, and 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.



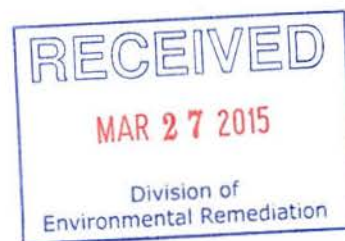
City of Rochester

Department of Law
City Hall Room 400A, 30 Church Street
Rochester, New York 14614-1295
www.cityofrochester.gov

T. Andrew Brown
Corporation Counsel

March 26, 2015

Robert W. Schick, P.E., Director
Division of Environmental Remediation, 12th Floor
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7011



Re: Execution of Brownfield Cleanup Program Agreement
Portion of Former Vacuum Oil Refinery, Rochester NY
NYSDEC Site No.: C828190;
Index No.: C828190-02-15

Dear Mr. Schick:

The City of Rochester is pleased to be entering into the Brownfield Cleanup Program ("BCP") as a Volunteer. Enclosed please find three originals of the Brownfield Site Cleanup Agreement ("Agreement") for the above referenced Site. Please have the Agreement executed on behalf of the Department and return one fully-executed original copy to my attention at the City of Rochester.

I have signed the Agreement on behalf of the City of Rochester, which is owner of the Site and has been approved to enter into the Agreement to perform a remedial program at the Site in accordance with the law and regulations.

The following information is provided in response to your request for proof that the party signing the Agreement is authorized to bind the City. I have executed the Agreement in my capacity as the City's Corporation Counsel. The City is the owner of the eight land parcels that comprise the approximately 15.4-acre site (the "Site") which is the subject of the Agreement.

By City of Rochester ordinance numbers 2014-254 and 2014-255, August 19, 2014 (copies of which are attached), the City Council approved and arranged for the issuance of \$600,000 in bonds to retain environmental engineers to complete a remedial investigation study and report for the Site. As explained in the Mayor's request for the legislation (also attached), the City had already applied to the Department to enter the Site into the BCP and the remedial investigation was intended to be performed in accordance with an anticipated BCP Agreement.

Pursuant to Section 9-1 of our City Charter, as the Corporation Counsel, I am authorized to "enter into any agreement and to compromise and settle any claim against the City," an authority that is "subject to necessary appropriations of the Council." The appropriations to commence performance of the Agreement have been made, and I am executing the Agreement in furtherance of the City's interests in remediating the Site to a degree that is sufficient to obtain a liability release from the State that, subject to certain qualifications, would release the City from any future environmental claims that the State may have against



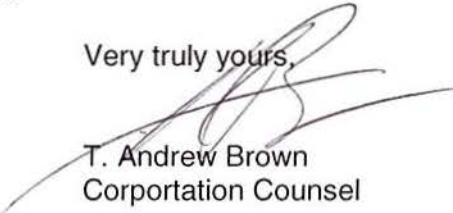
Robert W. Schick, P.E., Director
NYS Department of Environmental Conservation
March 26, 2015
Page 2

the City as an owner of the Site. Therefore, this BCP Agreement is a settlement of potential environmental remediation claims that I am authorized to execute as Corporation Counsel.

This approach is consistent with the City's past practice. Under the same authority, my predecessors and I have signed off on a number of stipulations with the Department to perform corrective action plans to address petroleum-based contamination at various City-owned facilities pursuant to Section 176 of the Navigation Law.

We are pleased to be working with the Department to investigate and restore this important Site so that it becomes an asset for the entire community. Please contact me if you have any questions or concerns regarding this matter.

Very truly yours,



T. Andrew Brown
Corporation Counsel



City of Rochester

City Clerks Office

Certified Ordinance

Rochester, N.Y., _____

TO WHOM IT MAY CONCERN:

I hereby certify that the following is a true copy of an ordinance which was duly passed by the Council of the City of Rochester on **August 19, 2014** and **Approved** by the Mayor of the City of Rochester, and was deemed duly adopted on **August 20, 2014** in accordance with the applicable provisions of law.

Ordinance No. 2014-254

Establishing maximum compensation for a professional services agreement with O'Brien & Gere Engineers, Inc. for environmental services in connection with the Vacuum Oil site remediation

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The sum of \$600,000, or so much thereof as may be necessary, is hereby established as the compensation to be paid for a professional services agreement between the City and O'Brien & Gere Engineers, Inc. to complete a Brownfield Cleanup Program remedial investigation for the Vacuum Oil site. The cost of said agreement shall be funded from a bond ordinance to be authorized for the project.

Section 2. This ordinance shall take effect immediately.

Passed by the following vote:

Ayes - President Scott, Councilmembers Conklin, Haag, McFadden, Miller, Ortiz, Palumbo, Patterson, Spaul - 9.

Nays - None - 0.

Attest

Hazel L. Washington

City Clerk



City of Rochester

City Clerks Office

Certified Ordinance

Rochester, N.Y., _____

TO WHOM IT MAY CONCERN:

I hereby certify that the following is a true copy of an ordinance which was duly passed by the Council of the City of Rochester on **August 19, 2014** and **Approved** by the Mayor of the City of Rochester, and was deemed duly adopted on **August 20, 2014** in accordance with the applicable provisions of law.

Ordinance No. 2014-255

Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$600,000 bonds of said City to finance the costs of a remedial investigation of environmental contamination of the Vacuum Oil site project in the City as amended

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The City of Rochester, in the County of Monroe, New York (herein called "City"), is hereby authorized to finance the costs of a remedial investigation of environmental contamination of the Vacuum Oil site project in the City (the "Project") located in the portion of the Former Vacuum Oil Refinery in the street locations listed below. The estimated maximum cost of said specific object or purpose, including preliminary costs and costs incidental thereto and the financing thereof, is \$600,000, and said amount is hereby appropriated therefor. The plan of financing includes the issuance of \$600,000 bonds of the City and the levy and collection of an ad valorem tax on all the taxable real property in the City without limitation as to rate or amount, sufficient to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

Vacuum Oil Site:

1 Cottage Street
13 Cottage Street

31 Cottage Street
69 Cottage Street
75 Cottage Street
100 Riverview Place
102 Violetta Street
A portion of 1320 South Plymouth Avenue

Section 2. Bonds of the City in the principal amount of \$600,000 are hereby authorized to be issued pursuant to the Constitution and laws of the State of New York, including the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), this Ordinance, and other proceedings and determinations related thereto.

Section 3. The City intends to finance, on an interim basis, the costs or a portion of the costs of said improvements for which bonds are herein authorized, which costs are reasonably expected to be reimbursed with the proceeds of debt to be incurred by the City, pursuant to this Ordinance, in the amount of \$600,000. This Ordinance is a declaration of official intent adopted pursuant to the requirements of Treasury Regulation Section 1.150-2.

Section 4. The period of probable usefulness of said specific object or purpose for which said bonds authorized pursuant to this Ordinance are to be issued, within the limitations of 11.00 a. 6-e of the Local Finance Law, is twenty (20) years.

Section 5. Each of the bonds authorized by this Ordinance and any bond anticipation notes issued in anticipation of the sale of said bonds shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation of said bonds, shall be general obligations of the City, payable as to both principal and interest by an ad valorem tax upon all the taxable real property within the City without limitation as to rate or amount. The faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds and provision shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this Ordinance and of said Law, and pursuant to the provisions of Section 30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals thereof, and of Sections 50.00, 56.00 to 60.00 and 168.00 of said Law, the powers and duties of the City Council relative to authorizing the issuance of any notes in anticipation of the sale of the bonds herein authorized, or the renewals thereof, and relative to providing for substantially level or declining debt service, prescribing the terms, form and

contents and as to the sale and issuance of the bonds herein authorized, and of any notes issued in anticipation of the sale of said bonds or the renewals of said notes, as well as to executing agreements for credit enhancement, are hereby delegated to the Director of Finance, as the Chief Fiscal Officer of the City.

Section 7. The validity of the bonds authorized by this Ordinance and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such Ordinance are not substantially complied with, and an action, suit or proceeding contesting such validity, is commenced within twenty (20) days after the date of such publication, or
- (c) such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This Ordinance shall take effect immediately, and the City Clerk is hereby authorized and directed to publish a summary of the foregoing ordinance, together with a Notice attached in substantially the form prescribed by Section 81.00 of the Law in "The Daily Record," a newspaper published in Rochester, New York, having a general circulation in the City and hereby designated the official newspaper of said City for such publication.

New text is underlined

Passed by the following vote:

Ayes - President Scott, Councilmembers Conklin, Haag, McFadden, Miller, Ortiz, Palumbo, Patterson, Spaul - 9.

Nays - None - 0.

Attest

Harold L. Washington
City Clerk

August 19, 2014

BOA nomination study and master plan, its successful collaborative approach in working with the PLEX Neighborhood Association, and unique experience and understanding of the project area.

The agreement will have an initial term of two years with provisions for two additional one-year extensions if the project duration and scope require additional services.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AN-152

Ordinance No. 2014-253
(Int. No. 269)

Authorizing a professional services agreement with Bergmann Associates, PC for environmental services in connection with the Vacuum Oil site remediation and authorizing a grant agreement and appropriating funds

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The Mayor is hereby authorized to enter into a grant agreement with the New York State Department of State for receipt and use of a grant in the amount of \$868,500 in funds from the Brownfield Opportunity Area program to finance a portion of the costs of the remediation of the Vacuum Oil site in the City, and said grant funds or such amount as shall be available for this project are hereby appropriated for said project.

Section 2. The sum of \$725,000, or so much thereof as may be necessary, is hereby established as the compensation to be paid for a professional services agreement between the City and Bergmann Associates, PC, for predevelopment phase studies, investigations and related services for the Vacuum Oil site. The cost of said agreement shall be funded as follows: \$652,500 from the grant funds anticipated to be received for the project from the New York State Department of State from the Brownfield Opportunity Area program; \$22,305 in prior year cash capital funds of the Department of Environmental Services; \$8,090 in 2011-12 cash capital funds of the Department of Environmental Services; and \$42,105 in 2012-13 cash capital funds of the Department of Environmental Services.

Section 3. The agreements shall contain such other terms and conditions as the Mayor deems appropriate.

Section 4. This ordinance shall take effect immediately.

Passed unanimously.

TO THE COUNCIL
Ladies and Gentlemen:

Ordinance No. 2014-254 and
Ordinance No. 2014-255
Re: Agreement - O'Brien & Gere, Vacuum
Oil Site Brownfield Cleanup Program

Council Priority: Jobs and Economic
Development

Transmitted herewith for your approval is legislation related to Brownfield Cleanup Program (BCP) remedial investigation services at the former Vacuum Oil site in the City of Rochester. This legislation will:

1. Establish \$600,000 as maximum compensation for an agreement with O'Brien & Gere Engineers, Inc. (O'Brien & Gere), Rochester, New York, for BCP remedial investigation services; and
2. Authorize the issuance of bonds in the amount of \$600,000 and appropriate the proceeds thereof to finance the cost of the agreement.

The former Vacuum Oil site is approximately 40 acres in size and located in the PLEX neighborhood adjacent to the western bank of the Genesee River near Exchange and Flint Streets. In July 2014, the City submitted an application to the New York State (NYS) BCP for City-owned properties on and adjacent to the former Vacuum Oil facility. The BCP remedial investigation study area consists of eight City-owned parcels of land approximately 15.4 acres in size and is located within the Vacuum Oil - South Genesee River Corridor Brownfield Opportunity Area (VOSGRC BOA). A railroad bridge spanning the Genesee River has been renovated by the City and now links public trails and the University of Rochester campus to the Vacuum Oil site. Previous environmental studies by ExxonMobil Corporation (the corporate successor to Vacuum Oil), the New York State Department of Environmental Conservation (NYSDEC), O'Brien & Gere and others have documented soil and groundwater contamination on portions of the Vacuum Oil site that requires additional investigation and delineation.

O'Brien & Gere is part of the technical and legal team with Harter Secrest & Emery that, for the past six years, has been providing expert procedural guidance and assistance to the City associated with its efforts to secure cost contribution and recovery from ExxonMobil for environmental investigation and cleanup costs related to the former Vacuum Oil facility.

Under this agreement, O'Brien & Gere will complete a BCP remedial investigation which will include collecting and analyzing soil and groundwater samples to assist in defining the nature and extent of contamination; identifying contaminant source areas; preparing project investigation work plans, health and safety plans, and community air monitoring plans; preparing draft and final site investigation and remedy selection reports including data usability reports; and determining if remedial actions or cleanup is warranted. The City's ultimate objective is to determine the extent of remediation at the Vacuum Oil site required to support new redevelopment in this area consistent with the VOSGRC BOA master plan, and other stakeholder visions.

O'Brien & Gere is recommended based on its prior involvement with the City's team working on ExxonMobil cost recovery; the quality of its plan for the BCP remedial investigation; experience with oil refinery investigations and cleanups, and prior experience with NYSDEC BCP projects; the proposed project team; the absence of a legal conflict of interest with ExxonMobil; and its reasonable costs.

O'Brien & Gere submitted a cost proposal in the amount of \$509,260 for performance of the remedial investigation under the NYS BCP. The City's Division of Environmental Quality recommends a contingency in the amount of \$90,740 to address unanticipated conditions, perform potential interim remedial measures during site investigation, and site restoration. The term of the agreement will extend until the NYSDEC issues the Record of Decision (ROD) which selects the cleanup plan for the City's properties. It is currently estimated that it will take two years to complete the remedial

August 19, 2014

investigation and secure NYSDEC approval of a cleanup plan. Adjustment to the specific unit prices in the agreement during the second and third year will be permitted subject to the City's approval.

Respectfully submitted,
Lovely A. Warren
Mayor

Attachment No. AN-153

Ordinance No. 2014-254
(Int. No. 270)

Establishing maximum compensation for a professional services agreement with O'Brien & Gere Engineers, Inc. for environmental services in connection with the Vacuum Oil site remediation

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The sum of \$600,000, or so much thereof as may be necessary, is hereby established as the compensation to be paid for a professional services agreement between the City and O'Brien & Gere Engineers, Inc. to complete a Brownfield Cleanup Program remedial investigation for the Vacuum Oil site. The cost of said agreement shall be funded from a bond ordinance to be authorized for the project.

Section 2. This ordinance shall take effect immediately.

Passed unanimously.

Ordinance No. 2014-255
(Int. No. 271)

Bond Ordinance of the City of Rochester, New York authorizing the issuance of \$600,000 bonds of said City to finance the costs of a remedial investigation of environmental contamination of the Vacuum Oil site project in the City as amended

BE IT ORDAINED, by the Council of the City of Rochester as follows:

Section 1. The City of Rochester, in the County of Monroe, New York (herein called "City"), is hereby authorized to finance the costs of a remedial investigation of environmental contamination of the Vacuum Oil site project in the City (the "Project") located in the portion of the Former Vacuum Oil Refinery in the street locations listed below. The estimated maximum cost of said specific object or purpose, including preliminary costs and costs incidental thereto and the financing thereof, is \$600,000, and said amount is hereby appropriated therefor. The plan of financing includes the issuance of \$600,000 bonds of the City and the levy and collection of an ad valorem tax on all the taxable real property in the City without limitation as to rate or amount, sufficient to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

Vacuum Oil Site:

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A portion of 1320 South Plymouth Avenue

Section 2. Bonds of the City in the principal amount of \$600,000 are hereby authorized to be issued pursuant to the Constitution and laws of the State of New York, including the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), this Ordinance, and other proceedings and determinations related thereto.

Section 3. The City intends to finance, on an interim basis, the costs or a portion of the costs of said improvements for which bonds are herein authorized, which costs are reasonably expected to be reimbursed with the proceeds of debt to be incurred by the City, pursuant to this Ordinance, in the amount of \$600,000. This Ordinance is a declaration of official intent adopted pursuant to the requirements of Treasury Regulation Section 1.150-2.

Section 4. The period of probable usefulness of said specific object or purpose for which said bonds authorized pursuant to this Ordinance are to be issued, within the limitations of 11.00 a. 6-e of the Local Finance Law, is twenty (20) years.

Section 5. Each of the bonds authorized by this Ordinance and any bond anticipation notes issued in anticipation of the sale of said bonds shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation of said bonds, shall be general obligations of the City, payable as to both principal and interest by an ad valorem tax upon all the taxable real property within the City without limitation as to rate or amount. The faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds and provision shall be made annually in the budget of the City by appropriation for (a) the amortization and redemption of the bonds and any notes in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 6. Subject to the provisions of this Ordinance and of said Law, and pursuant to the provisions of Section 30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals thereof, and of Sections 50.00, 56.00 to 60.00 and 168.00 of said Law, the powers and duties of the City Council relative to authorizing the issuance of any notes in anticipation of the sale of the bonds herein authorized, or the renewals thereof, and relative to providing for substantially level or declining debt service, prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and of any notes issued in anticipation of the sale of said bonds or the renewals of said notes, as well as to executing agreements for credit enhancement, are hereby delegated to the Director of Finance, as the Chief Fiscal Officer of the City.

Section 7. The validity of the bonds authorized by this Ordinance and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

- (a) such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) the provisions of law which should be complied with at the date of the publication of such Ordinance are not substantially complied with, and an action, suit or proceeding contesting such validity, is commenced within twenty (20) days after the date of such publication, or

August 19, 2014

(c) such obligations are authorized in violation of the provisions of the Constitution.

Section 8. This Ordinance shall take effect immediately, and the City Clerk is hereby authorized and directed to publish a summary of the foregoing ordinance, together with a Notice attached in substantially the form prescribed by Section 81.00 of the Law in "The Daily Record," a newspaper published in Rochester, New York, having a general circulation in the City and hereby designated the official newspaper of said City for such publication.

New text is underlined

Passed unanimously.

TO THE COUNCIL

Ladies and Gentlemen:

Ordinance No. 2014-256

Re: Agreement - High Falls Development
Corporation, Maintenance Services

Council Priority: Creating and Sustaining
a Culture of Vibrancy

Transmitted herewith for your approval is legislation establishing \$15,000 as maximum compensation for an agreement with High Falls Development Corporation (principal: Ben Kendig) to provide maintenance services in the area previously known as the High Falls Festival Site. The cost of the agreement will be funded from the 2014-15 Budget of the Department of Environmental Services.

The High Falls Development Corporation is the owner, developer and operator of the High Falls Building adjacent to the former festival site. The firm leases the site, and the two floors beneath it, from the City. While the terms of the lease stipulate that the firm is responsible for normal maintenance of the site and terrace areas, additional services are provided for certain designated areas, as specified, under the proposed agreement.

These area-wide services include litter and trash removal; routine graffiti removal; repair and resetting of pavers as needed; reseating of pavers every two years; annual fertilizing and mulching of landscape beds; and watering and weeding of landscape beds as needed. Additional services, depending on the specific sub-areas, include cleaning and removal of stains on pavers and concrete surfaces; painting of all metal surfaces; snow plowing, removal and deicing as needed; repointing of stone walls as needed; repair and painting of plastered walls on the terrace as needed; painting of fences and railings as needed; replacement of light bulbs as needed; and weekly cleanup of the "shelf" area contiguous to the terrace.

High Falls Development Corporation was selected to provide maintenance services given its interests in the surrounding area, proximity to the site, and the capability to provide maintenance services. The firm has provided these services since October 2000 (Ord. No. 2000-289), and the most recent agreement was authorized in September 2013 (Ord. No. 2013-320). A justification statement for not issuing a request for proposal is attached.

The agreement will result in the creation or retention of the equivalent of 0.2 full-time jobs.

Respectfully submitted,