

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

In the Matter of a Remedial Program for

**AMENDMENT TO BROWNFIELD SITE
CLEANUP AGREEMENT
Index No. C828190-02-15**

Portion of Former Vacuum Oil Refinery

DEC Site No: C828190

Located at: Cottage St/Riverview Pl/Violetta St/S Plymouth Ave, Rochester, Monroe
County, 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 ("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 Department and the Applicant seek to amend the existing BCP Agreement for the Site, based on the 2015 changes to the BCP.

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

I. Tax Credit Status & Deadline for receipt of Certificate of Completion (COC)

Based on the fact that the Site did not receive a COC by December 31, 2019, it is hereby subject to the terms of the BCP in effect as of July 1, 2015, including, but not limited to, the tax credit structure and the deadline of March 31, 2026.

With respect to eligible costs incurred under the BCP, this Amendment shall not change the effective date of the Agreement, and otherwise eligible costs incurred from the original effective date of the agreement will still be eligible costs for tax credit purposes.

II. Miscellaneous

A. Except for the modifications set forth herein, the original Agreement shall remain in full force and effect and the terms thereof and the obligations therein are incorporated herein and shall apply with the same force and effect to the provisions of this Amendment. The terms of the original Agreement, including all exhibits, appendices and subsequent modifications, are not otherwise modified or expanded in any way.

B. The terms herein shall constitute this complete and entire Amendment of the Agreement. No term, condition, understanding or agreement purporting to modify the terms of the Agreement shall be binding unless subscribed to by both parties in accordance with the terms of the Agreement.

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

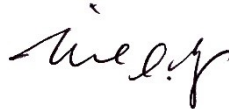
D. This Amendment may be signed in counterparts.

DATED:

June 18, 2020

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

By:



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

CONSENT BY APPLICANT

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

City of Rochester

By: _____ [Signature]

Title: _____ Corp Counsel

Date: _____ 5/21/20

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 21st day of May in the year 2020 before me, the undersigned, personally appeared Timothy R. Curtin, 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: Michelle Bradbury]
Signature and Office of individual
taking acknowledgment

MICHELLE BRADBURY
Notary Public State of New York
Qualified in Monroe County - 01BR6315209
Commission Expires November 24, 2022



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 Hayel 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

August 19, 2014

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

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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.

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- (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,

Questions about eCode360? Municipal users Join us daily between 12pm and 1pm EDT to**§ 9-1 Corporation Counsel.**

[§ 134, L.L. No. 4-1925; L.L. No. 19-1928; L.L. No. 5-1941; L.L. No. 6-1955; L.L. No. 18-1970; L.L. No. 8-1972; § 1, L.L. No. 9-1984^[1]; § 1, L.L. No. 10-1992; § 1, L.L. No. 1-2006; § 1, L.L. No. 4-2012]

The Corporation Counsel, as the head of the Department of Law, shall attend to all the legal business of the City. He or she shall be admitted to practice as an attorney and counselor in the courts of the State of New York. He or she shall be the legal advisor of the City and all its departments and officers; shall represent the same in all acts and proceedings to which they are a party; shall have power to appeal from any order, decision or judgment; and shall, subject to necessary appropriations of the Council, have power to enter into any agreement and to compromise and settle any claim against the City. The Corporation Counsel shall have the power to commence an action or proceeding in the name of the City, or the necessary and proper City department, board, bureau or officer. He or she shall approve or prepare for execution any contract or instrument to which the City is a party. With the approval of the Mayor, the Corporation Counsel shall appoint assistants and deputies and other members of the Department.^[2]

[1] *Editor's Note: This local law was approved at referendum 11-6-1984 and took effect 1-1-1986.*

[2] *Editor's Note: See also Ch. 12, Law, Department of, in this Code.*