

**AGREEMENT BETWEEN NATIONAL FUEL GAS DISTRIBUTION  
CORPORATION AND THE CITY OF BUFFALO REGARDING NYSDEC SITE  
NO. C915194A - FORMER BUFFALO SERVICE STATION OFFSITE**

THIS AGREEMENT is dated as of the \_\_\_ day of \_\_\_\_\_, 2016, by and between National Fuel Gas Distribution Corporation (the “Company”) and the City of Buffalo (the “City”) (each a “Party” and collectively, the “Parties”) to set forth certain agreements and understandings with respect to obligations set forth in that certain New York State Department of Environmental Conservation (“NYSDEC”) approved Environmental Easement, given by the City of Buffalo to the People of the State of New York, a copy of which is attached hereto as **Schedule A** (collectively, the “EE”) with respect to an approximately .127 acre portion of NYSDEC Site No. C915194A, owned by the City being legally described in **Schedule B** attached hereto (the “Property”);

WHEREAS, the Property and the rest of NYSDEC Site No. C915194A have been the subject of investigation pursuant to NYSDEC Order on Consent No. B9-0695-05-06A (the “Order”) executed by the Company and the NYSDEC, which Order requires, among other things, that the Company implement and maintain certain institutional controls at the Property and at the rest of NYSDEC Site No. C915194A;

WHEREAS, the Order provides, among other things, that the Company record a NYSDEC compliant Environmental Easement and NYSDEC approved Site Management Plan (the “SMP”) which sets forth the requirements for ongoing operations, reporting, monitoring and use restrictions with respect to the Property;

WHEREAS, the Company and the City understand that the affirmative obligations set forth in the EE, the SMP, and particularly the Excavation Work Plan attached to the SMP (the “EWP”), have the potential to increase costs from those costs that otherwise would be incurred by the City in the general operation and maintenance of the Property as a public right-of-way. Specifically, the SMP imposes or otherwise sets forth certain affirmative obligations at the Property, enumerated in **Schedule C** attached hereto (“General Affirmative Obligations”) and in instances where ground intrusive work is undertaken by the City or others that will extend more than eleven (11) feet below ground surface at the Property (“Deep Ground Work”). The

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ERIE COUNTY  
CLERK'S OFFICE

obligations set forth in the EWP are hereinafter referred to as "Excavation Obligations". The object and purpose of this Agreement is to establish the agreement between the Parties in writing, that the Company shall take on any and all General Affirmative Obligations as well as certain cost increases associated with Excavation Obligations discussed below and to further establish the City's agreement to execute the EE and to follow the terms of the EE and the SMP in the City's ownership and operation of the Property. The increase in costs which are demonstrably attributable to the Excavation Obligations at the Property are hereinafter referred to as the "Excavation Costs".

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are true and are included as though again set forth herein at length.
2. The City and the Company will adhere to the requirements set forth in the EE, the SMP and in the EWP. Company agrees to take on all costs attributable to adhering to those requirements except as set forth in paragraph numbered 6(d) of this Agreement.
3. The Company will undertake, at the Company's expense, all General Affirmative Obligations. The City will not hinder the Company's access to the Property and hereby grants the Company access to the Property to complete any and all General Affirmative Obligations which require access to the Property. In undertaking any General Affirmative Obligations, the Company agrees to: (i) give the City no less than ten (10) days' notice of the Company's intent to access the Property to undertake the General Affirmative Obligations, (ii) indemnify, defend and hold the City harmless from all claims, damages, losses, liabilities, costs and expenses relating to personal injury or property damage arising out of the Company's access to the Property to undertake the General Affirmative Obligations, and (iii) cause the Company's contractors to furnish the City with general liability insurance certificates.

4. The City will provide the Company with fifteen (15) days' written notice prior to undertaking any ground intrusive work at the Property that is expected to intrude less than eleven (11) feet below ground surface ("Shallow Ground Work"). The Company shall not have any financial obligation for any such Shallow Ground Work unless the City provides the Company with proof that there was an increase in the cost of the Shallow Ground Work which is directly and demonstrably attributable to the requirements set forth in the SMP and regardless of whether or not City provided advance notice to the Company of the Shallow Ground Work as set forth in this paragraph.
5. The City, except in cases of emergency as determined in the City of Buffalo's Department of Public Works, Parks and Streets' Commissioner's (the "Commissioner") sole discretion, will provide the Company with a minimum of thirty (30) days' written notice prior to undertaking any Deep Ground Work, which notice shall include a scope and description and the necessity of the Deep Ground Work.
6. The Company may elect (if the Commissioner in his sole discretion determines to allow it) to undertake the City's proposed Deep Ground Work. If the Company makes such an election, the Company will have fifteen (15) business days from the date of the Company's receipt of the City's written notice of Deep Ground Work to provide the City with written notification of the Company's intention to undertake the proposed Deep Ground Work pursuant to the following terms:
  - (a) The Company will select and contract directly with its own contractors and environmental professionals to perform the Excavation Obligations.
  - (b) The Company will ensure that the Excavation Obligations are completed in conformance with the EE, the SMP and the EWP.
  - (c) The Company will pay any and all costs incurred by the Company for implementing such Excavation Obligations as related to MGP-Impacted Soils (hereafter defined).



- (d) The Company's responsibility for Excavation Obligations is limited solely to soils at the Property containing MGP-related constituents which require special handling, management or disposal ("MGP-Impacted Soils"). Where through screening and/or testing it is determined that the soils do not contain MGP-Impacted Soils, but do contain other hazardous constituents or no hazardous constituents (collectively, "Other Soils"), the Company shall not be responsible for Excavation Obligations or Excavation Costs with respect to the Other Soils and the City shall be responsible for the Other Soils.
- (e) If the Company incurs Excavation Costs attributable to Other Soils, the City will reimburse the Company for Excavation Costs solely related to Other Soils. The Company shall deliver to the City an invoice for the Excavation Costs solely related to Other Soils (the "Company Invoice"). The Company Invoice shall set forth in detail the costs associated solely with Other Soils and shall provide receipts to substantiate each such cost. Within one hundred twenty (120) days of the Company's delivery of the Company Invoice, the City shall reimburse the Company for substantiated costs associated solely with respect to Other Soils.
- (f) In undertaking any Excavation Obligations, the Company agrees to: (i) give the City no less than five (5) days' notice of the Company's intent to access the Property to undertake the Excavation Obligations, (ii) indemnify, defend and hold the City harmless from all claims, damages, losses and liabilities related to personal injury or property damage arising out of such access, and (iii) cause the Company's contractors to furnish the City with general liability insurance certificates.
- (g) Notwithstanding anything contained in this Agreement which could be construed to the contrary, the surface of the Property is currently being operated as part of a public vehicular and pedestrian right of way. As such, the City must ultimately at all times control the Property. There is

also underground electric and a City related sewer located on the Property which may need to be accessed for operational objectives such as including but not limited to inspection, maintenance, repair, and/or replacement and/or relocation ("Utility Work"). Any such Utility Work will be subject to the same terms as set forth in this Agreement with respect to Deep Ground Work or Shallow Ground Work, respectively as applicable. If and when additional utilities are in the ordinary course of public right of way operation introduced to the Property, the same set of Utility Work considerations shall apply, it being understood and agreed however that repairs and maintenance are very likely to be within the Emergency Work (as hereinafter defined) category and in the event that such work does constitute Emergency Work, no advance notice is required to be given to the Company, however the City shall continue to comply with any and all notice requirements set forth in the SMP. It is further understood that the electric utility company and other utility companies are not parties to this Agreement, however the City acknowledges and agrees that the City is bound by this Agreement and the SMP and the EE with respect to any work undertaken at the Property by any such third party. The Company further acknowledges that the City and/or City's successor in ownership or control of the Property shall have the unrestricted right to undertake and introduce future uses, objectives and projects to the Property that may or may not be related to the operation of the Property as a public right of way, but the City acknowledges the EE, the SMP and the EWP with respect to the same.

7. In the event the Commissioner decides not to allow the Company to undertake the Excavation Obligations and/or in the event the Company does not provide written notice of the Company's intention to undertake the Excavation Obligations associated with the City's proposed Deep Ground Work within fifteen (15) business days of receipt of the City's notice of such proposed Deep Ground Work or should the Company affirmatively choose not to undertake the Excavation Obligations, the City shall, if the City actually proceeds with the proposed Deep

Ground Work, undertake the Excavation Obligations pursuant to the following terms:

- (a) The City will select and contract directly with its own contractors and environmental professionals for the Excavation Obligations.
  - (b) After completion or in intervals prior to completion of the Deep Ground Work, the City shall grant the Company periodic access to the Property to inspect the Deep Ground Work to ensure that the Deep Ground Work is completed in compliance with the EE and the SMP.
  - (c) After completion or in intervals prior to completion of the Deep Ground Work, the City shall provide the Company with an invoice or invoices for the Excavation Costs related to MGP Impacted Soils (the "City Invoice" or "City Invoices"). The City Invoice(s) shall set forth in detail the Excavation Costs with respect to substantiated MGP Impacted Soils and other costs associated with each Excavation Obligation performed.
  - (d) Within sixty (60) days of the Company's receipt of the City Invoice(s), the Company shall reimburse the City for the substantiated Excavation Costs.
  - (e) The City shall work in good faith to ascertain and substantiate all costs related to the Excavation Costs. The Parties shall and will work cooperatively in an effort to resolve any dispute with respect to any Excavation Obligations and/or Excavation Costs.
8. Notwithstanding anything to the contrary contained herein, in case of any emergency where immediate repair, replacement or maintenance requiring any work, which results in Deep Ground Work, is needed at the Property at any time or times ("Emergency Work") as determined in the sole discretion of the Commissioner, the City shall, as soon as practicable but not necessarily before the Emergency Work is commenced or completed, provide notice to the Company of any such Emergency Work. Such work will be done in a manner observing and complying with the EE, the SMP and the EWP, and the Company, after receipt of



notice of the Emergency Work, shall be given access to the Property to inspect the Deep Ground Work, including but not limited to documentation relating to the Deep Ground Work, to ensure that it is done in compliance with the EE and the SMP. In such situation wherein the City undertakes such Emergency Work, the Company agrees to pay the City the Excavation Costs, subject to the exceptions and restrictions set forth in paragraph numbered 6(d) of this Agreement, incurred by the City within sixty (60) days of the Company's receipt of the City invoice.

9. The Company hereby agrees to execute any and all regulatorily compliant waste manifests which the Commissioner or the Commissioner's designee deems necessary in connection with any and all instances of removal of MGP-Impacted Soils from the Property, which occur under circumstances contemplated by this Agreement and/or in the ordinary course of business in connection with ordinary maintenance of the street and/or the utilities at the Property. The City agrees to provide the Company with any and all necessary information reasonably requested by the Company to substantiate that the waste manifests are regulatorily compliant.
10. The City hereby agrees that upon the full execution of this Agreement, the City will immediately execute two originals of the EE and deliver the executed originals to the Company's attorney at the address listed in paragraph 12 below for immediate recording in the Office of the Erie County Clerk. If two (2) executed originals of the EE are not delivered to the Company's attorney within five (5) business days of the full execution of this Agreement, this Agreement shall be null and void and of no further force or effect.
11. The Company hereby agrees to release the City for any claims or liability related to the Company's past costs, which accrued prior to the date of full execution of this Agreement, including the Company's attorney and environmental consultant fees, with respect to the Property.
12. Any communication required or permitted to be given or delivered hereunder shall be in writing and shall be effective upon mailing if sent by first class

certified mail, postage prepaid and addressed to the Party intended at the address set forth below, or by overnight delivery service, at such other address as may be designated by notice given to the other Party as set forth herein:

**IF TO COMPANY:**

National Fuel Gas Distribution Corporation  
Risk Management Department  
6363 Main Street  
Williamsville, NY 14221  
Attention: Lee E. Hartz, Esq.

with a copy to:

National Fuel Gas Distribution Corporation  
Risk Management Department  
6363 Main Street  
Williamsville, NY 14221  
Attention: Tanya B. Alexander, CHMM

with a copy to:

Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203  
Attention: Morgan G. Graham, Esq.

**IF TO CITY:**

City of Buffalo  
65 Niagara Square  
Buffalo, NY 14202

with a copy to:

City of Buffalo Law Department  
1100 City Hall  
Buffalo, NY 14202  
Attention: Timothy A. Ball, Esq.  
Corporation Counsel

cc: John V. Heffron, Assistant Corporation Counsel  
1100 City Hall  
Buffalo, NY 14202

and cc:  
Commissioner of the Department of Public Works,  
Parks and Streets  
502 City Hall  
Buffalo, NY 14202

13. This Agreement is assignable by the City only upon prior written consent of the Company, which consent shall not be unreasonably conditioned or withheld.



Notwithstanding the foregoing, if the Company conditions consent to the assignment in a manner unsatisfactory to the City or if the Company withholds consent to the assignment, the City in the City's sole discretion shall have the right to: (i) not proceed with the assignment, (ii) keep this Agreement in place and remain obligated and responsible under this Agreement and under the EE and nonetheless proceed with the transfer/conveyance of the interests in the Property to the proposed assignee, or (iii) terminate this Agreement by written notice to the Company whereupon the City shall be free to proceed with the transfer/conveyance of the interests in the Property.

14. This Agreement is assignable by the Company only upon prior written consent of the City, which consent shall not be unreasonably conditioned or withheld.
15. This Agreement may not be terminated or amended except by a written instrument signed by all of the Parties hereto. The terms of this Agreement and the resolution of any disputes hereunder shall be governed by the laws of the State of New York. All proceedings including but not limited to dispute resolution meetings, depositions, examinations before trial and the like shall be venued in the Eighth Judicial District of New York. This Agreement is intended to supplement the EE, the SMP and the EWP and otherwise contains all of the terms and the understandings of the Parties with respect to the subject matter hereof, and supersedes any prior understandings or Agreements, whether oral or written.
16. If any provision in this Agreement shall be held to be excessively broad, it shall be construed, by limiting and reducing it, to be enforceable to the extent compatible with applicable law, provided that such enforcement comports with the Parties' intentions as set forth in this Agreement. To the extent that any provision of this Agreement shall be determined to be invalid or unenforceable, the invalid or unenforceable portion of such provision shall be deleted from this Agreement, and the validity and enforceability of the remainder of such provision and of this Agreement shall be unaffected. This Agreement was reviewed by each Party and each Party's counsel. The terms of this Agreement shall not be

construed against the Party that drafted it solely because that Party and that Party's counsel drafted it.

17. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

AGREED TO AND ACCEPTED:

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

By: [Signature]  
Name: LEE E. HARTL  
Title: ATTORNEY-IN-FACT

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

On the 28 day of JUNE in the year 2016, before me the undersigned, personally appeared LEE E. HARTL, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

MARK R. MESSINA  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires  
June 22, 2018



AGREED TO AND ACCEPTED:

**CITY OF BUFFALO**

By: Byron W. Brown  
Name: BYRON W. BROWN  
Title: MAYOR

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

On the 19 day of OCTOBER in the year 2016, before me the undersigned, personally appeared BYRON W. BROWN, 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 he/she acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

John Vincent Heffron  
Notary Public  
JOHN VINCENT HEFFRON  
Notary Public, State of New York  
No. 02HE4860576  
Qualified in Erie County  
My Commission Expires May 5, ~~2010~~ 2018 J.H.

APPROVED  
AS TO FORM ONLY

John Vincent Heffron  
Corporation Counsel  
By John Vincent Heffron 10.11.16

County: Erie Site No: C915194A Order on Consent Index : B9-0695-05-06A

SCHEDULE A  
ENVIRONMENTAL EASEMENT

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36  
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

**THIS INDENTURE** made this 13<sup>th</sup> day of January, 2017 between Owner(s) City of Buffalo, having an office at 65 Niagara Square, County of Erie, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS**, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located at the address of off-site to 249 West Genesee Street in the City of Buffalo, County of Erie and State of New York, known and designated on the tax map of the County Clerk of Erie as tax map parcel numbers: Section N/A Block N/A Lot N/A, being a portion of that property dedicated by Common Council Proceeding Resolution No. 268 on July 27, 1982. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately .127 +/- acres, and is hereinafter more fully described in the Land Title Survey dated September 22, 2014, revised May 7, 2015, and revised again on June 10, 2016, prepared by John E. McIntosh, III, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and



**WHEREAS**, the remedial action at the Site has been undertaken at the site by National Fuel Gas Distribution Corporation having an office at 6363 Main Street, Williamsville, New York 14221 County of Erie, State of New York ("National Fuel");

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index #B9-0695-05-06A, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii)  
and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls, to the extent that Engineering Controls exist on the Site, must be operated and maintained as specified in the Site Management Plan (SMP);

(i) Grantor and subsequent Site owners shall ensure that the Environmental Easement remains in place and effect.

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Erie County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;



- (i) Grantor shall adhere to the institutional controls required by the Environmental Easement, including but not limited to the prohibition of the use of groundwater underlying the property without treatment rendering it safe for intended use and the prohibition of vegetable gardens and

(5) Grantor shall provide access to the Department and National Fuel in order to collect data and information pertinent to Site Management of the Controlled Property at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

- (i) To the extent that Grantor is responsible for any controls in the SMP, Grantor and subsequent Site owners shall submit a written statement certifying that the controls at the property are unchanged from the previous certification;
- (ii) Grantor and subsequent Site owners shall notify the Department of changes of Site use and/or ownership; and
- (iii) Grantor and subsequent Site owners shall report emergencies to the Department and other appropriate authorities.

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

- (i) National Fuel shall prepare periodic review reports evaluating institutional and engineering controls, as applicable; and
- (ii) National Fuel shall prepare and implement a corrective measures plan, if necessary.

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

- (i) physical components of the remedy; and
- (ii) National Fuel shall decommission Site monitoring wells, if any, at an appropriate time to be determined by the Department.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for raising livestock or producing animal products for human consumption, and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor assumes the obligations identified in Paragraphs 2(A)(1), 2(A)(2), 2(A)(4)(i), 2(A)(5), 2(A)(6) and 2(A)(9) above. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP as identified in Paragraphs 2(A)(1), 2(A)(2), 2(A)(4)(i), 2(A)(5), 2(A)(6) and 2(A)(9) above and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall annually, or at such time as NYSDEC may require, submit to NYSDEC a written statement certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the institutional controls and/or engineering controls employed at such site:

- (i) are in-place;
- (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the

NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(2) the owner will continue to allow the Department and National Fuel access to such real property to evaluate such controls;

(3) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(4) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement.

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions



granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:

Site Number: C915194A  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

With a copy to:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or

counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

City of Buffalo:

By: Byron W. Brown

Print Name: BYRON W. BROWN

Title: MAYOR Date: OCTOBER 19, 2016

**Grantor's Acknowledgment**

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

On the 19 day of OCTOBER, in the year 2016, before me, the undersigned, personally appeared BYRON W. 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.

John Vincent Heffron  
Notary Public - State of New York

JOHN VINCENT HEFFRON  
Notary Public, State of New York  
No. 02HE4860576  
Qualified in Erie County  
My Commission Expires May 5, ~~2010~~ 2018 J.H.

APPROVED  
AS TO FORM ONLY

John Vincent Heffron  
Corporation Counsel  
By John Vincent Heffron 10.11.16



IN WITNESS WHEREOF, \_\_\_\_\_ hereby acknowledges this instrument and the terms and conditions hereof.

National Fuel Gas Distribution Corporation:

By: [Signature]

Print Name: LEE E. HARTZ

Title: Attorney-in-Fact Date: 6-28-14

**National Fuel's Acknowledgment**

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

On the 20<sup>th</sup> day of JUNE, in the year 20 14, before me, the undersigned, personally appeared LEE E. HARTZ, 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]  
Notary Public - State of New York

MARK R. MESSINA  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires  
June 22, 1994  
2018

**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:   
Robert W. Schick, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the 17<sup>th</sup> day of JANUARY, in the year 2017, before me, the undersigned, personally appeared Robert W. Schick, 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/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public - State of New York

David J. Chiusano  
Notary Public, State of New York  
No. 01CH5032146  
Qualified in Schenectady County,  
Commission Expires August 22, 2018

**SCHEDULE "A" PROPERTY DESCRIPTION**

ENVIRONMENTAL EASEMENT AREA DESCRIPTION  
NYSDEC SITE NO. C915194A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, State of New York, and being part of Lot 2, South Village of Black Rock, bounded and described as follows:

BEGINNING AT A POINT on the northeast line of Parcel No. 192 as shown on Map No. 192 of lands acquired by the People of the State of New York for New York State Thruway, the Niagara Section, Subdivision N4, said point also being on the southwest line of Fourth Street as dedicated by the City of Buffalo Common Council Proceeding No. 268 dated July 27, 1982, said point being further identified as N 1,051,607.52, E 1,067,464.11 according to New York State Plane Coordinate System – West Zone;

RUNNING THENCE: N-54°-07'-09"-E, a distance of 46.34 feet to a point;

RUNNING THENCE: S-35°-51'-44"-E, a distance of 120.0 feet to a point;

RUNNING THENCE: S-54°-07'-09"-W, a distance of 46.30 feet to a point on the southwest line of said Fourth Street;

RUNNING THENCE: N-35°-52'-51"-W, along the southwest line of said Fourth Street, a distance of 120.0 feet to the POINT OF PLACE OF BEGINNING, containing 0.128 Acre, be the same, more or less.

SUBJECT to easements, rights-of-way and restrictions of record.

SUBJECT to the rights of the public in and to that portion of the above described land which lays within the bounds of Fourth Street.

Bearing System based on the New York State Plane Coordinate System – West Zone.



SCHEDULE B

ENVIRONMENTAL EASEMENT AREA DESCRIPTION  
NYSDEC SITE NO. C915194A

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie, State of New York, and being part of Lot 2, South Village of Black Rock, bounded and described as follows:

BEGINNING AT A POINT on the northeast line of Parcel No. 192 as shown on Map No. 192 of lands acquired by the People of the State of New York for New York State Thruway, the Niagara Section, Subdivision N4, said point also being on the southwest line of Fourth Street as dedicated by the City of Buffalo Common Council Proceeding No. 268 dated July 27, 1982, said point being further identified as N 1,051,607.52, E 1,067,464.11 according to New York State Plane Coordinate System – West Zone;

RUNNING THENCE: N-54°-07'-09"-E, a distance of 46.34 feet to a point;

RUNNING THENCE: S-35°-51'-44"-E, a distance of 120.0 feet to a point;

RUNNING THENCE: S-54°-07'-09"-W, a distance of 46.30 feet to a point on the southwest line of said Fourth Street;

RUNNING THENCE: N-35°-52'-51"-W, along the southwest line of said Fourth Street, a distance of 120.0 feet to the POINT OF PLACE OF BEGINNING, containing 0.128 Acre, be the same, more or less.

SUBJECT to easements, rights-of-way and restrictions of record.

SUBJECT to the rights of the public in and to that portion of the above described land which lays within the bounds of Fourth Street.

Bearing System based on the New York State Plane Coordinate System – West Zone.

## SCHEDULE C

### General Affirmative Obligations

1. Annual Certification pursuant to section 2.2 of the SMP.
2. Any and all Site monitoring and monitoring reports and inspections pursuant to section 3 of the SMP.
3. Any and all required certification of institutional controls pursuant to section 4.2 of the SMP.
4. Any and all Periodic Review Reports pursuant to section 4.3 of the SMP.