



Department of
Environmental
Conservation

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

PART I. BROWNFIELD CLEANUP AGREEMENT AMENDMENT APPLICATION

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

☒ Amendment to [check one or more boxes below]

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

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

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

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

☐ Amendment to modify description of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Sections I and V below and Part II*]

☐ Amendment to Expand or Reduce property boundaries of the property(ies) listed in the existing Brownfield Cleanup Agreement [*Complete Section I and V below and Part II*]

☐ **Sites in Bronx, Kings, New York, Queens, or Richmond counties ONLY:** Amendment to request determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit. Please answer questions on the supplement at the end of the form.

☐ Other (explain in detail below)

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

This amendment adds the Buffalo and Erie County Industrial Land Development Corporation to the Brownfield Cleanup Agreement.

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

| | | |
|---|--------------------|-----------------------------------|
| Section I. Existing Application Information | | |
| BCP SITE NAME: Site I-6 Tecumseh Phase I Business Park BCP SITE NUMBER: C915197F | | |
| NAME OF CURRENT APPLICANT(S): Tecumseh Redevelopment, Inc. | | |
| INDEX NUMBER OF EXISTING AGREEMENT: B9-0696-05-06(A) DATE OF EXISTING AGREEMENT: 12/12/2005 | | |
| Section II. New Requestor Information (if no change to Current Applicant, skip to Section V) | | |
| NAME Buffalo and Erie County Industrial Land Development Corporation | | |
| ADDRESS 95 Perry Street, Suite 403 | | |
| CITY/TOWN Buffalo | | ZIP CODE 14203 |
| PHONE 7 16-856-6525 | FAX | E-MAIL |
| Is the requestor authorized to conduct business in New York State (NYS)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | |
| <ul style="list-style-type: none"> If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's (DOS) Corporation & Business Entity Database. A print-out of entity information from the DOS database must be submitted to DEC with the application, to document that the applicant is authorized to do business in NYS. <div style="border: 1px solid black; padding: 2px; display: inline-block;">See Exhibit A</div> | | |
| NAME OF NEW REQUESTOR'S REPRESENTATIVE John Cappellino, Executive Vice President | | |
| ADDRESS 95 Perry Street, Suite 403 | | |
| CITY/TOWN Buffalo | | ZIP CODE 14203 |
| PHONE (716) 856-6525 | FAX | E-MAIL jcappell@ecidany.com |
| NAME OF NEW REQUESTOR'S CONSULTANT (if applicable) LaBella Associates, D.P.C. | | |
| ADDRESS Olympic Towers, 300 Pearl St., Suite 130 | | |
| CITY/TOWN Buffalo | | ZIP CODE 14202 |
| PHONE (716) 551-6283 | FAX | E-MAIL RNapieralski@LaBellaPC.com |
| NAME OF NEW REQUESTOR'S ATTORNEY (if applicable) Robert G. Murray (Harris Beach PLLC) | | |
| ADDRESS 726 Exchange Street, Suite 1000 | | |
| CITY/TOWN Buffalo | | ZIP CODE 14210 |
| PHONE (716) 200-5180 | FAX (716) 200-5204 | E-MAIL bmurray@harrisbeach.com |
| Requestor must submit proof that the party signing this Application and Amendment has the authority to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC. Is this proof attached? <div style="border: 1px solid black; padding: 2px; display: inline-block;">See Exhibit B</div> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Describe Requestor's Relationship to Existing Applicant: New Requestor, the Buffalo and Erie County Industrial Land Development Corporation, purchased the subject real property from Applicant, Tecumseh Redevelopment, Inc., on July 25, 2017 | | |

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

OWNER'S NAME (if different from requestor) Buffalo and Erie County Industrial Land Development Corporation

ADDRESS 95 Perry Street, Suite 403

CITY/TOWN Buffalo, New York

ZIP CODE 14203

PHONE 716-856-6525

FAX

E-MAIL jcappell@ecidany.com

OPERATOR'S NAME (if different from requestor or owner) Same as Owner

ADDRESS Same as Owner

CITY/TOWN

ZIP CODE

PHONE

FAX

E-MAIL

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

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

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

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

☐ PARTICIPANT

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

☒ VOLUNTEER

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

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

See Exhibit C

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

Requestor's Relationship to Property (check one):

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

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

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

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

ADDRESS

CITY/TOWN

ZIP CODE

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

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

Check appropriate boxes below:

☐

Changes to metes and bounds description or TBL correction

☐

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

Approximate acreage added: _____

ADDITIONAL PARCELS:

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

☐

Reduction of property

Approximate acreage removed: _____

PARCELS REMOVED:

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

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

PART II. BROWNFIELD CLEANUP PROGRAM AMENDMENT

| Existing Agreement Information | |
|---|---------------------------|
| BCP SITE NAME: Site I-6 Tecumseh Phase I Business Park | BCP SITE NUMBER: C915197F |
| NAME OF CURRENT APPLICANT(S): Tecumseh Redevelopment Inc. | |
| INDEX NUMBER OF EXISTING AGREEMENT: B9-0696-05-06(A) | |
| EFFECTIVE DATE OF EXISTING AGREEMENT: December 12, 2005 | |

Declaration of Amendment:

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

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

Statement of Certification and Signatures: New Requestor(s) (if applicable)

(Individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature: _____

Print Name: _____

(Entity)

Buffalo and Erie County Industrial
Land Development Corporation

I hereby affirm that I am (title Executive Vice President) of (entity _____); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

My _____ signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: _____ Signature:  _____

Print Name: John Cappellino

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

(Individual)

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

Date: _____ Signature: _____

Print Name: _____

(Entity)

I hereby affirm that I am ^{VP Environmental Affairs & Real Estate} (title) of ^{Tecumseh Redevelopment, Inc.} (entity) which is a party to the Brownfield Cleanup Agreement and/or Application referenced in Section I above and that I am aware of this Application for an Amendment to that Agreement and/or Application. My signature below constitutes the requisite approval for the amendment to the BCA Application, which will be effective upon signature by the Department.

Date: 9/10/2017 Signature: Keith Nagel

Print Name: Keith Nagel

REMAINDER OF THIS AMENDMENT WILL BE COMPLETED SOLELY BY THE DEPARTMENT

Status of Agreement:

☐

PARTICIPANT

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

☒

VOLUNTEER

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

Effective Date of the Original Agreement:

December 2, 2005

Signature by the Department:

DATED: October 2, 2017

Amendment #2

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____

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

SUBMITTAL INFORMATION:

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

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

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ **LEAD OFFICE:** _____

PROJECT MANAGER: _____

Exhibit A

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through July 3, 2017.

Selected Entity Name: BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

Selected Entity Status Information

| | |
|---------------------------------|---|
| Current Entity Name: | BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION |
| DOS ID #: | 745601 |
| Initial DOS Filing Date: | JANUARY 13, 1982 |
| County: | ERIE |
| Jurisdiction: | NEW YORK |
| Entity Type: | DOMESTIC NOT-FOR-PROFIT CORPORATION |
| Current Entity Status: | ACTIVE |

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)
BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION
95 PERRY STREET-SUITE 403
BUFFALO, NEW YORK, 14203

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except

the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

| # of Shares | Type of Stock | \$ Value per Share |
|--------------------------|---------------|--------------------|
| No Information Available | | |

*Stock information is applicable to domestic business corporations.

Name History

| Filing Date | Name Type | Entity Name |
|--------------|-----------|---|
| JAN 13, 1982 | Actual | BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION |

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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Exhibit B

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND
DEVELOPMENT CORPORATION
RESOLUTION**

A meeting of the Buffalo and Erie County Industrial Land Development Corporation (the "Corporation") was convened on February 22, 2017, at 8:45 a.m.

The following resolution was duly offered and seconded, to wit:

RESOLUTION OF THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (THE "ILDC") AUTHORIZING THE ILDC TO: (i) ENTER INTO A FUNDING AGREEMENT FOR ECONOMIC DEVELOPMENT PURPOSES WITH THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") TO PROVIDE \$6,700,000 IN THE FORM OF A PARTIALLY REFUNDABLE GRANT FROM THE AGENCY'S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT URBAN DEVELOPMENT ACTION GRANT ("UDAG") REFLOW FUND; (ii) MAKE A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iii) AUTHORIZE THE NEGOTIATION AND EXECUTION AND DELIVERY OF AN AGREEMENT OF PURCHASE AND SALE TO BE ENTERED INTO WITH TECUMSEH REDEVELOPMENT INC. ("TECUMSEH") WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW); (iv) AUTHORIZE THE EXECUTION AND DELIVERY OF BROWNFIELD SITE CLEANUP AGREEMENT(S) WITH RESPECT TO THE PROJECT (AS MORE FULLY DESCRIBED BELOW); (v) APPROVE OF AND AUTHORIZE THE EXECUTION AND DELIVERY OF A \$2,780,000 NEW YORK STATE EMPIRE STATE DEVELOPMENT CORPORATION GRANT FOR PURPOSES OF THE PROJECT (AS MORE FULLY DESCRIBED BELOW); AND (vi) ENTER INTO A CERTAIN LICENSE AGREEMENT WITH TECUMSEH WITH RESPECT TO CERTAIN EXISTING INFRASTRUCTURE IMPROVEMENTS RELATED TO THE PROJECT

WHEREAS, the Buffalo and Erie County Industrial Land Development Corporation (the "ILDC") is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in Erie County and to lessen the burdens of government and act in the public interest; and

WHEREAS, the ILDC desires to purchase approximately 150 acres of real property located on the former Bethlehem Steel site in Lackawanna, New York (the "Real Property") which is currently owned by Tecumseh Redevelopment Inc. ("Tecumseh") and position the Real Property for redevelopment (collectively, the "Project") as depicted within Exhibit A; and

WHEREAS, the ILDC and Tecumseh have negotiated the terms of an Agreement of Purchase and Sale setting forth the terms and conditions relating to: (i) the disposition of the Real Property to the ILDC in furtherance of the Project, (ii) Tecumseh's obligations with respect to undertaking certain remedial activities on certain portions of the Real Property prior to closing(s), (iii) the purchase price with respect to parcels of the Real Property that will be subject to remedial activities, the purchase price with respect to parcels of the Real Property that will not be subject to remedial activities, and the sequencing of the purchase of each parcel or parcels of real property constituting the Real Property, and (iv) requirements relating to the removal of certain industrial land use restrictions affecting the Real Property, all of the foregoing being contemplated by the ILDC and Tecumseh in furtherance of the Project; and

WHEREAS, upon acquisition of the Real Property, the ILDC intends to undertake a planned redevelopment of, and to prepare a Generic Environmental Impact Statement for, the Real Property for commercial and industrial purposes to promote and encourage job creation and new investment for the benefit of the residents of Erie County; and

WHEREAS, the Erie County Industrial Development Agency (the "Agency"), an affiliate of the ILDC, maintains a UDAG Reflow Fund (the "UDAG Fund"), said UDAG Fund having been established based on rental payments derived from a project funded by an Agency UDAG grant, where after UDAG Fund proceeds have been invested within the Agency's venture capital investment program which has resulted in certain cash distributions back to the UDAG Fund thereby expanding the size of the UDAG Fund; and

WHEREAS, the Agency desires to assist the ILDC in its efforts to acquire and redevelop the Real Property by granting UDAG Funds to the ILDC in the amount not to exceed \$5,700,000 to enable the ILDC to purchase the Real Property from Tecumseh; and

WHEREAS, in addition, the Agency desires to further assist the ILDC, upon taking title the Real Property, by granting UDAG Funds to the ILDC in an amount not to exceed \$1,000,000 to be used by the ILDC for purposes of carrying the Real Property for such expenses including, but not to be limited to, insurance costs, and special assessments and user fees costs; and

WHEREAS, the ILDC desires to accept the Agency's grant of UDAG Funds from the Agency in the amount of \$5,700,000 to purchase the Real Property and in the amount of \$1,000,000 to carry the Real Property and proposes in return to reimburse the Agency, over time, by: (i) submitting to the Agency the amount of \$2,780,000 upon the ILDC's receipt of the ESD Grant, and (ii) submitting a reimbursement payment back to the Agency in an amount equal to 50% of the net proceeds received by the ILDC upon the future sale of, and with respect to each such future sale of, portions of the Real Property ("Real Property Sale Proceeds"), to refund the Agency in an amount not to exceed \$6,700,000; and

WHEREAS, to assist in the redevelopment of the Real Property, the County of Erie has already approved funding in the County Budget in years 2014, 2015, 2016, and 2017 to be utilized specifically for infrastructure and redevelopment of the Real Property; and

WHEREAS, the ILDC has secured a Regional Council Award from the New York State Empire State Development Corporation ("ESD") providing that, upon the sum total expenditure of \$10,780,000 made with respect to the Project and activities related to the project – said expenditure consisting of: (i) the acquisition of the Real Property (an anticipated ILDC \$5,700,000 expenditure), (ii) the construction of the related Niagara River Shoreline Trail immediately adjacent to the Real Property (an anticipated Erie County \$480,000 expenditure), and (iii) the removal, relocation, and construction of rail track and related utilities adjacent to and within the Real Property (an Erie County \$4,550,000 expenditure), ESD would then grant the ILDC \$2,780,000 provided, however, that it is anticipated that ESD will provide one-half of the ESD Grant amount to the ILDC immediately following the ILDC's purchase of the Real Property and in any event, the entirety of the ESD Grant amount will be provided to the ILDC upon completion of the Niagara River Shoreline Trail design and right of way acquisition and the removal, relocation, and construction of rail track and related utilities adjacent to and within the Real Property; and

WHEREAS, the Agency desires to appropriate and grant UDAG Funds to the ILDC for the Project in the total amount of \$5,700,000 to acquire the Real Property, and in the total amount of \$1,000,000 to carry the Property; and

WHEREAS, the ILDC desires to negotiate and execute a Grant Disbursement Agreement (the "GDA") with the Agency in the amount of \$5,700,000 to purchase the Real Property and in the amount of \$1,000,000 to carry the Real Property, thereby promoting and facilitating the future redevelopment of the Real Property and the future creation of new jobs and new investment; and

WHEREAS, the ILDC, in accordance with Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereto in 6 N.Y.C.R.R. Part 617 (collectively referred to as the "State Environmental Quality Review Act" and/or "SEQR") has determined that the Project is classified as "Type 1 Action" as defined by SEQR for which coordinated review is required, and undertook coordinated review with respect to the Project, and

WHEREAS, to properly undertake the Project, it will be necessary for the ILDC to enter into certain Brownfield Site Cleanup Agreements (the "BCP Agreements") affecting the entirety of the Real Property to ensure that the ILDC can obtain the benefits of the New York State Brownfield Cleanup Program; and

WHEREAS, upon taking title to the Real Property, the ILDC, as a condition of the Real Property transfer, will enter into a temporary license agreement with Tecumseh to continue to permit Tecumseh to access private infrastructure improvements existing on the Real Property that benefit adjacent property owners, said license agreement to

terminate upon the completion of construction work to be undertaken by Erie County to remove, relocate, and construct rail track and related utilities and infrastructure adjacent to and within the Real Property.

NOW, THEREFORE, BE IT RESOLVED BY THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Based upon a review of the Project and the Full Environmental Assessment Form (the "EAF") prepared for the Project, the ILDC hereby:

- (i) Confirms the status of the Project as a Type I action and affirms the ILDC status as Lead Agency for the Project, within the meaning of, and for all purposes of complying with SEQR; and
- (ii) Determines that no potentially significant impacts on the environment are indicated in the EAF or otherwise associated the Project; and
- (iii) Determines that all of the provisions of SEQR that are required to be complied with as a condition precedent to undertake the Project and the participation by the ILDC in undertaking the Project have been satisfied. This determination constitutes a Negative Declaration for purposes of SEQR pursuant to 6 N.Y.C.R.R. § 617.7 of the SEQR regulations.

Section 2. The ILDC hereby approves and authorizes the receipt of the UDAG Funds from the Agency to carry out the activities as described herein, in an amount not to exceed \$5,700,000 to purchase the Real Property and in the amount of \$1,000,000 to carry the Real Property and further approves and authorizes the ILDC to reimburse the Agency with proceeds from the ESD Grant and with Real Property Sale Proceeds upon the sale of the Real Property or parcels of the Real Property as described herein.

Section 3. The Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer are hereby authorized, on behalf of the ILDC, to negotiate, execute and deliver the GDA, and any related documents, to be entered into with the Agency, with respect to disbursement and repayment of the UDAG Funds consistent with the terms as provided for within this resolution.

Section 4. The ILDC hereby authorizes the undertaking of the acquisition of the Real Property from Tecumseh in the amount of \$5,700,000 in accordance with the terms and conditions as described herein and the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer are hereby authorized, on behalf of the ILDC, to execute and deliver an Agreement of Purchase and Sale and a related license agreement with Tecumseh, and any other related documents required to accomplish the purposes of this resolution, with such changes, variations, omissions and insertions as

authorized by the Chair, the Vice Chair, the President/Chief Executive Officer, and/or the Executive Vice President, in consultation with the ILDC general counsel, to constitute conclusive evidence of such approval.

Section 5. The ILDC hereby authorizes the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, on behalf of the ILDC, to enter into and amend, as appropriate, the BCP Agreements that affect the entirety of the Real Property to ensure that the ILDC can obtain the benefits of the New York State Brownfield Cleanup Program.

Section 6. The ILDC hereby accepts receipt of the ESD Grant in the amount of \$2,780,000 and authorizes the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, on behalf of the ILDC, to execute, on behalf of the ILDC, any documents, agreements, instruments or certificates in connection with the ESD Grant and further, directs and appoints the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, on behalf of the ILDC, to carry out any administration, reporting, disbursement, draw down or any other activity related to the ESD Grant as may be necessary to implement the intent of the ESD Grant.

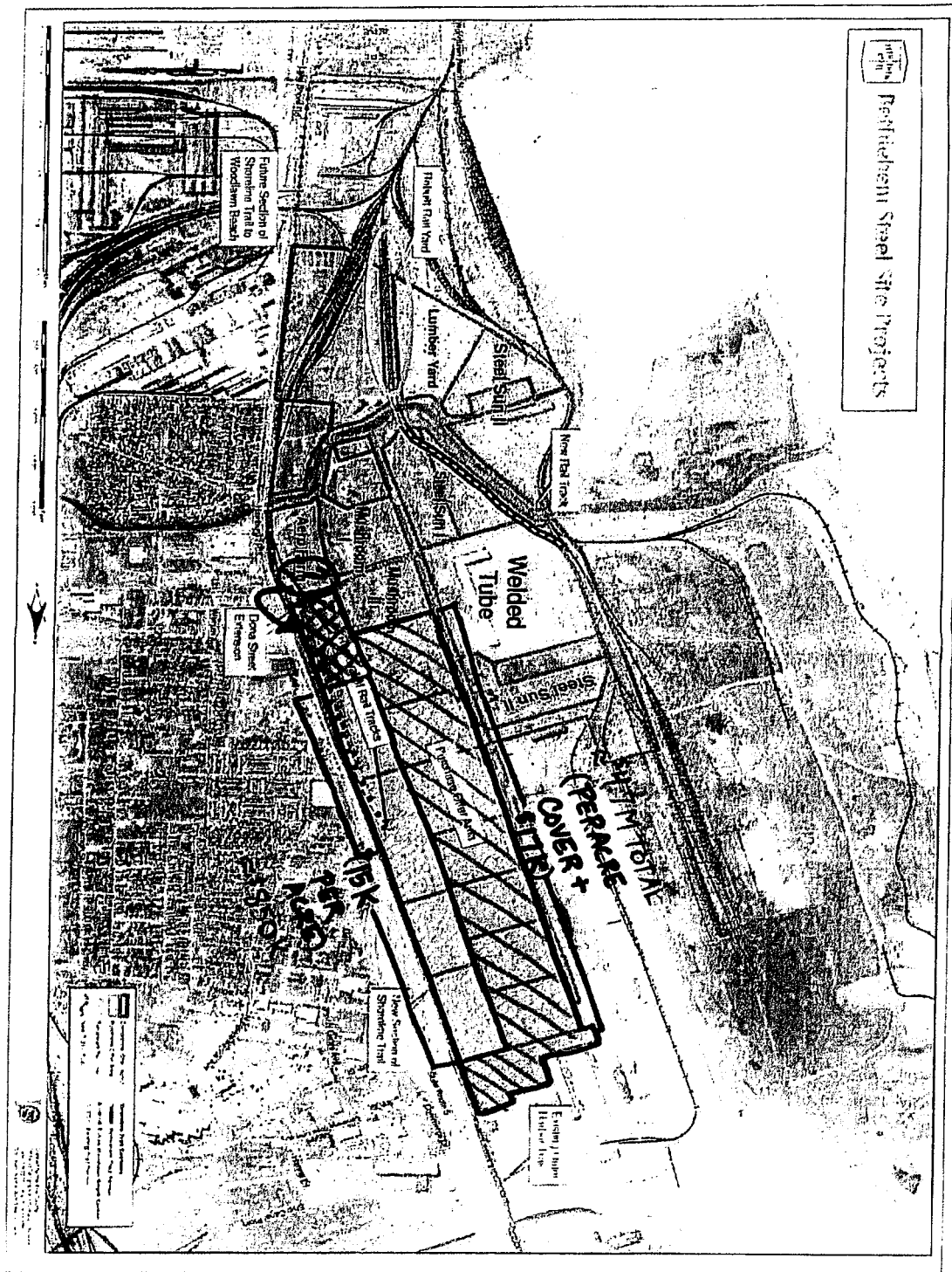
Section 7. The Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, are hereby authorized and directed, and in the name and on behalf of the ILDC to obtain such approvals and consents of regulatory or governmental authorities, negotiate and execute any related documents, certifications, or agreements, and to do all such further acts and things as may be necessary, or in the opinion of such officer, employee or agent so acting, desirable and proper to effect the purposes of the foregoing Resolutions.

Section 8. This resolution shall take effect immediately.

Dated: February 22, 2017

EXHIBIT A

Real Property



STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, the undersigned Assistant Secretary of the Buffalo and Erie County Industrial Land Development Corporation, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Buffalo and Erie County Industrial Land Development Corporation (the "ILDC"), including the resolution contained therein, held on February 22, 2017 with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the ILDC and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the ILDC had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the ILDC present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand on this 22nd day of February, 2017.

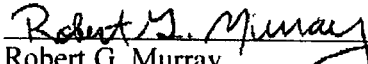

Robert G. Murray
Assistant Secretary

Exhibit C

Brownfield Cleanup Program

Application to Amend Brownfield Cleanup Agreement and Amendment

Section IV. Eligibility Information for New Requestor

Volunteer Certification: The Buffalo and Erie County Industrial Land Development Corporation (the "New Requestor") has appropriately answered "no" to all the eligibility questions within this section, and hereby certifies that it is a volunteer and that its liability arises solely as a result of ownership, current operation of and involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

New Requestor has and had no current or prior direct or indirect ownership interest or any other interest in any prior owner or operator of the property. New Requestor acquired its fee title interest in the property on July 25, 2017. The property was purchased from Tecumseh Redevelopment, Inc. ("Tecumseh"), and Tecumseh is currently a volunteer with respect to the Brownfield Cleanup Agreement affecting the property that is the subject of this Application to Amend Brownfield Cleanup Agreement and Amendment.

Tecumseh has, prior to New Requestor obtaining title to the property, and at the insistence of New Requestor as a condition of taking title to the property, undertaken certain remedial activities on the property, and also, prior to taking title to the property, the New Requestor secured a letter from the New York State Department of Environmental Conservation, dated June 28, 2017 (as attached hereto) confirming that all interim remedial measures required by the Decision Documents for the property have been completed and also confirming that placement of the cover system, as described in the related Site Management Plan for the property, as amended, is the only remaining action required to be undertaken for the property to obtain a Certificate of Completion ("COC"). Since taking title, New Requestor has not undertaken any activity on the property resulting in soil disturbance or otherwise undertaken any activity affecting the soil or groundwater, has taken appropriate care to ensure that there are not continuing releases of contamination on the property, that there are no threatened future releases of contamination on the property, and has prevented human, environmental, or natural resource exposure to any previously released contamination. New Requestor, since taking title to the property, anticipates undertaking a master planning process with respect to the property and adjacent real property that will culminate in the completed remediation of the site and ultimate issuance of a COC.

As such, New Requestor confirms that its liability arises solely as a result of ownership, current operation of and involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum, and affirms and confirms that New Requestor should be considered a "volunteer" as that term is defined under Section 27-1405(1)(b) of the New York Environmental Conservation Law.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7220 | F: (716) 851-7226
www.dec.ny.gov

June 28, 2017

Mr. Thomas H. Forbes, P.E.
TurnKey Environmental Restoration, LLC
2558 Hamburg Turnpike, Suite 300
Buffalo, NY 14218

Dear Mr. Forbes:

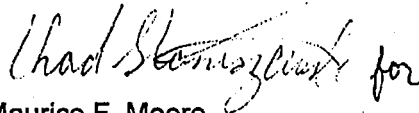
Lackawanna Business Park II Parcel II-8,
Site No. C915198H
Lackawanna Business Park II Parcel II-11,
Site No. C915198K
Lackawanna Business Park I Parcel I-2, C915197B
Lackawanna Business Park I Parcel I-4, C915197D
Lackawanna Business Park I Parcel I-6, C915197F
Lackawanna Business Park I Parcel I-8, C915197H

The New York State Department of Environmental Conservation ("NYSDEC") hereby provides notice to Tecumseh Redevelopment Inc. that all of the above-listed parcels of real property, located in the City of Lackawanna, Erie County, New York, have satisfied the condition stated below:

1. All interim remedial measures required by the Decision Documents for the respective parcels have been completed; and
2. Placement of the cover system, as described and as applicable, within the Turnkey Environmental Restoration, LLC January, 2014 Site Management Plan for Tecumseh Phase I Business Park, as amended and approved from time to time, or the Turnkey Environmental Restoration, LLC January, 2014 Site Management Plan for the Tecumseh Phase II Business Park, as amended and approved from time to time, is the only remaining action required to be undertaken for the above-referenced parcels to obtain Certificate of Completion(s) for those parcels.

Thank you for your attention to this matter.

Sincerely,



Maurice F. Moore
Engineering Geologist 1
Division of Environmental Remediation

MFm/tm



Department of
Environmental
Conservation

Mr. Thomas H. Forbes, P.E.
June 28, 2017
Page 2

Ec: Chad Staniszewski, P.E., NYSDEC
Sara Bogardus, NYSDOH
Keith Nagle, Tecumseh Redevelopment
Paul Werthman, P.E., Benchmark