

FILE

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
1996 CLEAN WATER/CLEAN AIR BOND ACT
ENVIRONMENTAL RESTORATION PROGRAM
STATE ASSISTANCE CONTRACT

IN RE:

Municipality Name: City of New Rochelle / County of Westchester

Site Name: Davids Island

Site Address: Davids Island, New Rochelle, NY Contract Number: C303006

Site Number: E360077 Amendment Number: 1

This CONTRACT, (Amendment No. 1) is made between the New York State Department of Environmental Conservation (Department), acting for and on behalf of the State, and City of New Rochelle with offices located at 515 North Avenue, New Rochelle, NY 10801, jointly with the County of Westchester, Michaelian Office Building, 148 Martine Avenue, White Plains, NY 10601 (hereinafter "Municipality")

WITNESSETH

WHEREAS, the Department and the Municipality entered into a contract on July 13, 2006, (Original Contract), which was duly assigned Contract No: C303006, by the Office of the State Comptroller (State Comptroller); and

WHEREAS, State Assistance to the Municipality is being increased by this Amendment No: 1 in the amount of Two Hundred Sixty Thousand dollars (\$260,000); for a total of One Million One Hundred Forty-Two Thousand dollars (\$1,142,000).

WHEREAS, there are circumstances necessitating a modification of the Original Contract and the parties desire to amend said Original Contract.

NOW THEREFORE, in consideration of the mutual covenants, promises, representations, and conditions made herein, the parties agree as follows:

(I). Section VI of the Original Contract, entitled "State Assistance Amount", is hereby repealed and rescinded in its entirety and is replaced with the following:

The Commissioner shall pay the Municipality for its Eligible Costs in conducting the Project in an amount not to exceed One Million One Hundred Forty Two Thousand dollars (\$1,142,000), which amount has been determined by the Commissioner to be up to 90 percent of

AMEND NEW SACS (July 2007)

the estimated Eligible Costs for on-site work and up to 100 percent of the Eligible Costs of any off-site work directed by the Department to be undertaken outside the boundaries of the Site that is approved by the Department. The Department shall not pay for work that is not an Approved Activity, as defined in the "Glossary" which is attached and made a part of this Contract. The Department shall not pay for Department-approved proposed work that was not completed to the Department's satisfaction. Municipality may contribute its share of the Eligible Costs of the project from sources deemed eligible pursuant to Article 56 and its regulations thereto. If the final Eligible Costs are lower than those used to calculate the estimated Eligible Costs amount, the parties agree to either amend this State Assistance Contract to apply the same percentage shown above to the final Eligible Costs in order to determine the revised contract amount if the project is ongoing, or to reimburse the Municipality based on the final Eligible Costs and disencumber the unexpended contract amount and close out the contract, if the project is completed. Upon request by the Department, the Municipality agrees to execute and return the Contract Amendment to the Department within 90 days of receipt of a Contract Amendment that will identify the revised Contract amount.

(II). Section XVII, entitled "Miscellaneous U." of the Original Contract is hereby repealed and rescinded in its entirety and is replaced with the following:

U. The term of this Contract shall start September 30, 2005. This Contract shall end on December 30, 2009. The Municipality agrees to proceed expeditiously with and to complete the Project in accordance with Work Plans approved by the Department, and any revisions thereto, and to carry out its other obligations under this Contract.

(III). Section XV of the Original Contract, entitled "Communications A.", is hereby repealed and rescinded in its entirety and is replaced with the following:

A. All written communications required by this Contract shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Municipality shall be sent to:

Matthew Hubicki, Project Manager
NYS Dept. Of Environmental Conservation
Remedial Bureau C
Div. Of Environmental Remediation
625 Broadway, 11th Fl.
Albany, NY 12233-7014

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

Charles B. Strome III
City Manager
City of New Rochelle
515 North Ave.
New Rochelle, NY 10801

Andrew J. Spano
County Exec.
Westchester County
Michaelian Office Bldg.
148 Martine Ave.
White Plains, NY 10601

(IV). The Scope of Work, Schedule A is hereby deleted and replaced with a new Scope of Work, dated March 4, 2008.

(V). Appendix A dated May 2003 is hereby deleted and Appendix A dated June 2006 is attached hereto.

(VI). This Contract and Amendment No: 1 will be effective upon approval and filing by the State Comptroller in accordance with Section 112 of the State Finance Law.

(VII). Except as specifically modified herein, all terms and conditions of the Original Contract remain in full force and effect.

CONTRACT NUMBER C303006

In witness whereof, the parties have signed this Contract on the date indicated opposite each signature. The signatory for the Department provides the following Agency Certification: "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

FOR MUNICIPALITY: City of New Rochelle

State of New York)
County of Westchester) ss: hm By: Cl B. [Signature]
Title: City Manager
Date: 5/22/08

On this 23 day of May, 2008, before me, the undersigned, personally appeared Charles B. Shime (name) or (names) personally known to me or proved to me on the basis of satisfactory evidence to be the individual 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 on behalf of which the individual(s) acted, executed the instrument.

By: [Signature]
Signature and office of the individual taking acknowledgment

Date: 5/23/08

MICHAEL A. BROOKS
Notary Public, State of New York
No. 01BF5062602
Qualified in Westchester County
Commission Expires August 08, 2008

~~FOR DEPARTMENT~~

By: [Signature]
Title: Director of MBS
Date: March 12, 2009

Approved as to form

APPROVED AS TO FORM
NYS ATTORNEY GENERAL

MAR 20 2009

By: [Signature]
for the Attorney General
PETER FAVRETTO
ASSOCIATE ATTORNEY

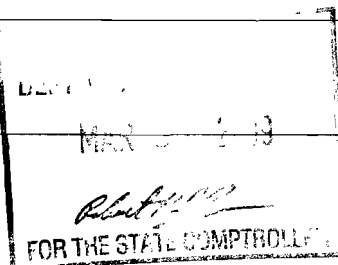
Date: _____

Approved:

Thomas P. DiNapoli
State Comptroller

By: _____

Date: _____



CONTRACT NUMBER C303006

In witness whereof, the parties have signed this Contract on the date indicated opposite each signature. The signatory for the Department provides the following Agency Certification: "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

FOR MUNICIPALITY: Westchester County

State of New York)
) ss:
County of Westchester)

By: Andrew J. Spano
Title: County Executive
Date: 12/12/08

On this 10th day of December, 2008, before me, the undersigned, personally appeared Andrew J. Spano (name) or (names) personally known to me or proved to me on the basis of satisfactory evidence to be the individual 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 on behalf of which the individual(s) acted, executed the instrument.

By: Dawn M. Falco
Signature and office of the individual taking
acknowledgment

DAWN M. FALCO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01FA6125845
QUALIFIED IN WESTCHESTER COUNTY
COMMISSION EXPIRES APRIL 25, 20 2011

Date: 12-10-08

FOR DEPARTMENT

By: Nancy Wilson
Title: Director of MBS
Date: March 12, 2009

Approved as to form:

By: _____
for the Attorney General
Date: _____
MAR 20 2009
PETER FAVRETTO
ASSOCIATE ATTORNEY

Approved:

Thomas P. DiNapoli
State Comptroller

By: _____
Date: _____

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

The contract is not effective until it is approved by the State Comptroller and filed in his office
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
1996 CLEAN WATER/CLEAN AIR BOND ACT
ENVIRONMENTAL RESTORATION PROGRAM
STATE ASSISTANCE CONTRACT

SCHEDULE A

Scope of Work

March 4, 2008

Municipality Name: City of New Rochelle / County of Westchester

Site Name: Davids Island

Site Address: Davids Island, New Rochelle, NY 10801

Contract Number: C303006

Site Number: E360077

Amendment Number: 1

GENERAL PURPOSE

The general purpose of this project is to undertake all approved activities necessary to complete the Project required by this Contract. Project-specific Work Plans will become part of and enforceable under this Contract upon approval by the Department.

GENERAL SCOPE

INVESTIGATION:

The Remedial Investigation/Alternatives Analysis Report (RI/AAR) will involve all tasks necessary to investigate the site conditions, determine the public health and environmental impacts of the site, and to utilize this information to develop and evaluate appropriate remedial actions. During the RI/AAR, the Municipality will also remove and properly dispose of contaminants within all containment vessels, such as drums, tanks and transformers, located on the Site.

Specific tasks include: work plan development, site characterization, investigation of off-site impacts, a survey of the site and a metes and bounds description of the site, an exposure assessment, development of alternatives, screening of alternatives, post-screening field work, detailed analysis of alternatives, data validation, and public participation. Data collection and analysis will provide a sufficient basis for the Department to prepare a Proposed Remedial Action Plan (PRAP) and present it to the public.

INVESTIGATION CALCULATION:

	On-site	Off-site	Demolition/Asbestos	Total
Total Eligible Cost:	\$ 1,066,111	\$ 160,000	\$ 45,000	\$1,271,111
Percentage:	90%	100%	50%	N/A
Total SAC Amount:	\$ 959,500	\$ 160,000	\$ 22,500	\$1,142,000

Less: Executed SAC Amount: \$ 882,000

SAC Amendment Amount: \$ 260,000

AMEND NEW SACS (July 2007)

STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

I HEREBY CERTIFY that I have compared the foregoing Act No. 126 - 2005 and Resolution No. 84 - 2005 with the originals on file in my office and that the same are correct transcripts therefrom and of the whole of said original Act and Resolution which were duly adopted by the Westchester County Board of Legislators of the County of Westchester on May 23, 2005 and approved by the County Executive on May 25, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 18th day of December, 2008.



Tina Seckerson

Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

(seal)

HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER

Your Committee is in receipt of a communication from the County Executive requesting approval of an Act and a Resolution which would, if adopted by your Honorable Board, authorize the County of Westchester to submit a joint application with the City of New Rochelle ("City") to the New York State Department of Environmental Conservation ("NYSDEC") for grant funding pursuant to the State Environmental Restoration Program ("ERP"), for additional investigation and remediation of environmental conditions at Davids Island in furtherance of the County's intent to acquire fee title in Davids Island from the City for parkland purposes.

Your Committee is informed that, beginning in 2001, after Legislator Pinto, Mayor Idoni, and the County Executive announced that the County would purchase Davids Island from the City for Six Million Five Hundred Thousand (\$6,500,000) Dollars, the County's administration has worked in cooperation with members of this Honorable Board and City officials to undertake preliminary planning efforts in connection with this initiative.

In 2002, upon the advice of the County Attorney that provisions of the NYS General City Law specify that waterfront property owned by a city is subject to a "public trust" and that the property cannot be sold or otherwise alienated by that city without an act of the State Legislature, the County and the City joined together in preparing the necessary State legislation to allow the conveyance of Davids Island to the County for parkland purposes. A Home Rule Resolution was issued by the County, with this

Honorable Board and the County Executive acting as co-sponsors, in support of this State legislation which was ultimately enacted by the New York State Legislature on August 20, 2002. A copy of the approved State legislation is annexed hereto as Schedule "A."

As this Honorable Board is aware, in 2002, the County also hired a consultant to undertake an environmental assessment of the island, and to develop cost estimates for remediation of the environmental conditions which it identified thereon. Since receiving the consultant's report, which concluded that the costs of remediating environmental contamination in the soils and in the deteriorated structures on the island could be in excess of \$12 million, the County's administration has focused its efforts on identifying funding sources for the remediation of these environmental conditions as a necessary precursor to the County's acquisition of the island for parkland purposes.

Your Committee is advised that, to date, federal funding in the amount of \$4.1 million has been secured by Congresswoman Nita Lowey, and that the Corps has proposed a project to remove the deteriorated buildings and infrastructure from the abandoned military base facilities on Davids Island utilizing such federal funding. Because these structures are both a source of environmental contamination and notable safety hazards due to the extent of their deterioration, your Committee concludes that the Corps' proposed project is both a very welcome and critical component of the remediation process.

Your Committee is further informed that the County has advised the City of the additional grant funding available through the State's ERP Program, which is administered by the NYSDEC and provides funding, in accordance with the Clean

Water/Clean Air Bond Act of 1996 and related legislation, for municipal programs designed to investigate and/or remediate the sources of environmental contamination where the municipal-owner is not the proximate cause of such contamination.

Your Committee is informed that the City has since requested that the County join in its ERP grant application for funding of additional investigation and remediation of the environmental conditions on Davids Island, which additional investigative work the NYSDEC has advised is a mandatory prerequisite to the future award of ERP remediation funding, as a co-applicant.

Your Committee is further informed that the Act and Resolution which are annexed hereto would authorize the County to submit a joint application with the City for grant funding under the State's ERP program. A copy of the draft grant application is annexed hereto and made a part hereof as Schedule "B." Your Committee is advised that, by submitting this application, the County will be committing to participate in both the investigation and remediation phases of the ERP program, as follows:

- (1) State grant funds will cover 90% of the costs of the investigative work which is the subject of the current grant application, with the local match funding the remaining 10% of project costs; and
- (2) State grant funds will cover from 50-90% of the costs of the remediation work, with the required local match covering the balance of remediation costs, subject to the scope of work and cost estimates to be developed during the investigative phase.

Of note, neither the annexed application, nor the relevant Resolution or Act, specify a sum certain for either the total grant request or the required local match associated with the investigation phase of this work. Your Committee is informed that this is because the State's ERP Program is an anomaly in that, upon approval of the grant application, the State will fund a fixed percentage of the actual cost of either the investigation or remediation phases (i.e. 90% of investigation work) even where the actual cost of the work undertaken exceeds the State-approved project cost estimate. For example, it is estimated that the additional investigative work to be performed at Davids Island under the ERP program will cost \$1 million, requiring a State/ERP contribution of 90% or \$900,000. However, in the event that the actual cost of investigation rises to \$1.5 million, the State will honor its commitment to pay 90% of the total cost or \$1,350,000. In such event, the local match will also increase proportionately.

Your Committee is also informed, however, that the annexed Act does place a financial limit on the County's share of the local match for this grant request in the total not-to-exceed amount of Sixty Thousand (\$60,000) Dollars. This figure is based on the estimated \$1 million cost of the investigative work proposed under the current grant application. Given that the required local match of 10% or \$100,000 would apply, the \$60,000 represents a 50/50 split of the local match between the City and the County, with an additional \$10,000 allowance built into the authorization in the event that the actual costs of the investigative work exceed the estimate by up to twenty (20%) percent. Pursuant to said Act, the County's share of the local match shall be calculated as follows:

(i) in the event that the local match shall equal One Hundred Thousand (\$100,000) Dollars or less, the County and the City will pay equal shares of the total local match; and

(ii) in the event that the local match shall exceed One Hundred Thousand (\$100,000) Dollars, the County and the City shall negotiate their respective shares of that portion of the local match which exceeds One Hundred Thousand (\$100,000) Dollars, provided that any County share in excess of Sixty Thousand (\$60,000.00) Dollars shall be subject to additional legal approval.

Your Committee is further informed that the Act authorizing the County to make and submit a joint application with the City for participation in the State ERP grant program, as described herein, will also ratify the annexed Resolution, which is presented in the standard form required by the NYSDEC for ERP program participation. Please be advised that your Honorable Board's approval of both instruments is required to effectuate the necessary approvals regarding the County's participation in this grant program.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). The Commissioner of Planning has reviewed the applicable SEQRA regulations, and has advised that the making of applications under the ERP/Clean Water/Clean Air Bond Act of 1996, as described herein, is a Type II action under SEQRA pursuant to 6 NYCRR 617.5(c)(21) ("conducting concurrent environmental . . . feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action"), as specified in the annexed SEQRA Status Sheet. As such, this Honorable Board has no

further responsibilities under SEQRA as set forth in 6 NYCRR 617.6(a)(1)(i). Your Committee concurs in this determination.

Further, your Committee concurs with the County Executive's determination that the County's proposed purchase, remediation, and dedication of Davids Island as parkland presents a unique and unprecedented opportunity for the County to convert blighted and unproductive waterfront land into much-needed, multi-dimensional parkland on the Long Island Sound. The potential remediation of the precarious environmental conditions on the island, which may exist as a result of the previous use of the island as a military base, and the permanent preservation of its natural resources as parkland will be one of the most important preservation efforts undertaken by the County in recent history.

Therefore, your Committee recommends the adoption of the Act and the Resolution, annexed hereto and as described herein, in furtherance of the County's intent to acquire fee title in Davids Island from the City of New Rochelle for parkland purposes.

Dated: May 16, 2005

White Plains, New York

Bernie Spuckerman

21 B.V.F. Judicial Nyce
Gordon Spect-Garcia

William J. Ryan
Parks & Recreation

Theresa G. Lattotte

James H. Morris

Budget & Appropriations

Bernie Spuckerman
Vito Photo Judicial Nyce
William J. Ryan
Parks & Recreation

Theresa G. Lattotte

Theresa G. Lattotte

21 B.V.F.

James H. Morris

James H. Morris

Environment

SEQR STATUS SHEET

PROJECT: Davids Island Grant Application

DEPARTMENT: Planning

Description

Davids Island is a 78-acre island located in Long Island Sound, off the coast of New Rochelle. Formerly a U.S. Army base, known as Fort Slocum, it was conveyed to the City of New Rochelle in 1967 and has remained uninhabited since then. Beginning in 2001, the County has been working towards acquisition of Davids Island as a County park. In 2002, the County conducted an environmental assessment of the island, which identified remediation needs costing in excess of \$12 million.

In furtherance of these efforts, the County proposes to submit a joint application with the City of New Rochelle to the NYS Department of Environmental Conservation for a grant under the State Environmental Restoration Program to fund additional investigation of environmental conditions at Davids Island.

SEQR Status

Type II. The proposed grant for additional investigation work is classified as Type II action, pursuant to section 617.5(c)(21), "conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes, necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action."

ACT NO. 126 - 2005

AN ACT authorizing the County Executive of the County of Westchester, or his authorized designee, to make and execute a joint application with the City of New Rochelle to the New York State Department of Environmental Conservation for grant funding pursuant to the State Environmental Restoration Program for certain work, namely the investigation and remediation of environmental conditions at Davids Island, in furtherance of the County's intent to acquire fee title in Davids Island from the City of New Rochelle for parkland purposes.

WHEREAS, the County of Westchester (hereinafter the "County") has been advised by the New York State Department of Environmental Conservation ("NYSDEC") that grant funding is available to fund the remediation of environmental conditions at Davids Island pursuant to the State's Environmental Restoration Program ("ERP"); and

WHEREAS, the NYSDEC has also advised that, as a condition of awarding ERP funding for such remediation, it will require that additional investigative work to be undertaken on Davids Island; and

WHEREAS, ERP funding is also available for this investigative work, pursuant to which State grant funds will cover ninety (90%) percent of the costs of such additional investigation; and

WHEREAS, the County and the City of New Rochelle (“City”) desire to apply for such ERP funding as co-applicants in furtherance of the County’s intent to acquire fee title to Davids Island from the City for parkland purposes; and

WHEREAS, the NYSDEC requires the adoption of a standardized Resolution by any municipality which requests ERP funding.

NOW THEREFORE, BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Executive, or his authorized designee, is hereby authorized and directed to make this joint application with the City of New Rochelle to the NYSDEC for grant funding pursuant to the State Environmental Restoration Program in order to fund both the additional investigation of environmental conditions on Davids Island as required by the NYSDEC, and the remediation thereof (“Project”).

§2. The attached Resolution authorizing the County of Westchester to participate in the State Environmental Restoration Program, for the purposes specified herein, is hereby adopted.

§3. The County of Westchester is hereby authorized to fund its share of the ten (10%) percent local match for cost of the investigative phase of the Project in the total not to exceed amount of Sixty Thousand (\$60,000) Dollars, as follows:

(i) in the event that the local match shall equal One Hundred Thousand (\$100,000) Dollars or less, the County and the City will pay equal shares of the total local match; and

(ii) in the event that the local match shall exceed One Hundred Thousand (\$100,000) Dollars, the County and the City shall negotiate their respective shares of that portion of the local match which exceeds One Hundred Thousand (\$100,000) Dollars, provided that any County share in excess of Sixty Thousand (\$60,000.00) Dollars shall be subject to additional legal approval.

§4. The County Executive or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Executive deems necessary or desirable to accomplish the purposes hereof.

§5. This Act shall take effect immediately.

RESOLUTION NO. 84 - 2005

A RESOLUTION authorizing the items listed below pursuant to the Clean Water/Clean Air Bond Act of 1996 in connection with the remediation of Davids Island.

WHEREAS, the County of Westchester (hereinafter the "County") has been advised by the New York State Department of Environmental Conservation ("NYSDEC") that certain work, as described in its co-application with the City of New Rochelle (hereinafter the "City") and its attachments, will be required ("Project"), and after thorough consideration of the various aspects of the problem has hereby determined that the work specified in such application is desirable; is in the public interest and is required in order to implement the Project; and

WHEREAS, Article 56 of the NYS Environmental Conservation Law authorizes State assistance to municipalities for environmental restoration projects by means of a contract and the County deems it to be in the public interest and benefit under this law to enter into a joint contract with the City of New Rochelle therefor; and

NOW THEREFORE, BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Executive, or his authorized designee, is hereby authorized to act on behalf of the County in all matters related to the State assistance under ECL Article 56, Title 5 in connection with this joint application with the City for the funding of the Project, as described herein. The County Executive, or his

authorized designee, is authorized to make application therefor, execute the State Assistance Contract, as co-recipient with the City, submit Project documentation, and otherwise act for the County's governing body in all matters related to State assistance for the Project.

§2. The County agrees that it will fund its portion of the cost of the Project and that funds will be made available to initiate the Project's field work within twelve (12) months of written approval of its joint application with the City by the New York State Department of Environmental Conservation.

§3. A certified copy of this authorizing Resolution shall be prepared and transmitted to the New York State Department of Environmental Conservation together with the joint Application for State Assistance and to the City of New Rochelle.

§4. This Resolution shall take effect immediately upon passage and shall specifically apply to the application annexed hereto as Schedule "B."

FISCAL IMPACT STATEMENT

CAPITAL PROJECT: BPL2A Feasibility Studies - David's Island

☐ NO FISCAL IMPACT PROJECTED

CAPITAL BUDGET IMPACT

(To be completed by Finance Department and Budget Department)

A) ☒ GENERAL FUND ☐ AIRPORT ☐ SPECIAL REVENUE FUND (Districts)

EXPENSES AND REVENUES

Source of County Funds (check one): ☒ Current Appropriations
☐ Capital Budget Amendment

B) BONDING AUTHORIZATIONS

Total Principal \$ 0 PPU: _____ Anticipated Interest Rate _____ %
Anticipated Annual Cost (Principal and Interest) \$ _____
Total Debt Service (Annual Cost X Term) \$ _____

Finance Department: _____

C) IMPACT ON OPERATING BUDGET

(To be completed by Operating Department and reviewed by Budget Department)

Potential Related Expenses: Annual \$ 0 (Previously appropriated Cash to Capital)

Potential Related Revenues: Annual \$ 0

Anticipated Savings to County and/or Impact on Department Operations
(Describe in detail for current and next four years.):

Previously appropriated Cash to Capital

Prepared by: Ed Hoffmeister

Reviewed By: _____

Title: Associate Planner

Budget Department

Department: Planning

If you need more space, please attach additional sheets.

City of New Rochelle, N.Y.

Introduced On: 5/6/08

Introduced By:

d:

Adopted:

No. 82

Council Members Louis J. Trangucci,
Moved: Albert A. Tarantino, Jr., James C. Stowe
(and) Barry R. Fertel, Marianne L. Sussman,
Seconded: and Mayor Noam Bramson

Approved As To Form:

[Signature]

Corporation Counsel

Dist	Member	Yeas	Nays	Abstain	Absent
1 st	Trangucci	✓			
2 nd	Tarantino	✓			
3 rd	Stowe	✓			
4 th	St. Paul				✓
5 th	Fertel	✓			
6 th	Sussman	✓			
Mayor	Bramson	✓			

12.1.

SUBJECT }
OR
TITLE }

ORDINANCE AMENDING ORDINANCE NO. 232 OF 2005 ACCEPTING THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION GRANT; AMENDING ORDINANCE NO. 287 OF 2004, THE BUDGET OF THE CITY OF NEW ROCHELLE FOR 2005; AMENDING ORDINANCE NO. 301 OF 2007, THE BUDGET OF THE CITY OF NEW ROCHELLE FOR 2008; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTERMUNICIPAL STATE ASSISTANCE CONTRACT AND AMENDMENTS THERETO FOR THE DAVIDS ISLAND ENVIRONMENTAL RESTORATION INVESTIGATION PROJECT.

BE IT ORDAINED by the City of New Rochelle, as follows:

Ordinance No. 232 of 2005, entitled "ORDINANCE ACCEPTING THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION GRANT; AMENDING ORDINANCE NO. 287 OF 2004, THE BUDGET OF THE CITY OF NEW ROCHELLE FOR 2005; AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTER-MUNICIPAL AGREEMENT WITH THE COUNTY OF WESTCHESTER REGARDING THE DAVIDS ISLAND ENVIRONMENTAL RESTORATION INVESTIGATION PROJECT" is hereby amended in its entirety to read as follows:

ORDINANCE AMENDING ORDINANCE NO. 232 OF 2005 ACCEPTING THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION GRANT; AMENDING ORDINANCE NO. 287 OF 2004, THE BUDGET OF THE CITY OF NEW ROCHELLE FOR 2005; AMENDING ORDINANCE NO. 301 OF 2007, THE BUDGET OF THE CITY OF NEW ROCHELLE FOR 2008; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTERMUNICIPAL STATE ASSISTANCE CONTRACT AND AMENDMENTS THERETO FOR THE DAVIDS ISLAND ENVIRONMENTAL RESTORATION INVESTIGATION PROJECT.

BE IT ORDAINED by the City of New Rochelle, as follows:

1. The City Council accepts the Department of Environmental Conservation Grant in the amount of [\$882,000.] \$1,142,000.

2. The City Council authorizes the City's funding for this project in the amount of [\$59,000.] \$69,111.

3. The City Manager is authorized to execute an Inter-Municipal Agreement State Assistance Contract with the County of Westchester and the New York State Department of Environmental Conservation to undertake the Environmental Restoration Investigation Project for Davids Island.

4. In order to accomplish the foregoing, Ordinance No. 287 of 2004, the Budget of the City of New Rochelle, is hereby amended to read as follows:

Increase Estimated Revenue - Capital Fund

CP 005.AA	NYS DEC Bond Act Grant - Davids Island Remediation	\$882,000
CP 006.AA	Reimbursement - Westchester County - Davids Island Remed	\$ 59,000
CP 001	Transfer from General Fund	\$ 59,000

Increase Appropriations - Capital Fund

CP 5021	Davids Island Environmental Remediation	\$1,000,000
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Increase/ (Decrease) Appropriations - General Fund

IT9KF	Transfer to Capital Fund	\$59,000
UE4CO	Grant Match Contingency Account	\$(39,004)
UE4CN	Contingency Account	\$(19,996)

5. In order to increase the reimbursement limits and funding for the Project, Ordinance No. 301 of 2007, the Budget of the City of New Rochelle 2008, is hereby amended to read as follows:

Increase Appropriations – General Fund:

IT9KF	Transfer to Capital Fund	\$10,111
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Decrease Appropriations – General Fund:

UE4CO	Contingency Account for Grant Match	(\$10,111)
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Increase Estimated Revenue – Capital Fund:

CP 005.AA	NYS Aid – DEC (Davids Island)	\$260,000
CP 006.AA	Reimbursements – County (Davids Island)	\$1,000
CP 001	Transfer from General Fund	\$10,111

Increase Appropriations – Capital Fund:

CP 5021	Davids Island Remediation	\$271,111
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6. The City Manager is authorized to execute the associated amendments to the State Assistance Contract for the Davids Island Environmental Restoration Investigation Project.

Matter in [brackets] omitted.

Mater underlined added.

Authenticated and certified)
this 6th day of May, 2008)

NOAM BRAMSON, Mayor
DOROTHY ALLEN, City Clerk