

**STANDARD FORM OF AGREEMENT  
BETWEEN  
TVGA CONSULTANTS  
AND  
CHAUTAUQUA COUNTY**

Prepared By:



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*Global Solutions for the Built Environment*

**AGREEMENT  
BETWEEN  
CLIENT AND CONSULTANT**

THIS IS AN AGREEMENT effective as of Feb 5, 2008 ("Effective Date")

Between

**TVGA CONSULTANTS**  
("CONSULTANT")  
and

**CHAUTAUQUA COUNTY**  
("CLIENT")

CLIENT intends to complete a Remedial investigations/Alternatives Analysis (RI/AA) program at the Edgewood Warehouse Site ("Assignment").

CLIENT and CONSULTANT in consideration of their mutual covenants as set forth herein agree as follows:

**ARTICLE 1 - CONSULTANT'S SERVICES**

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**1.01 Scope**

- A. CONSULTANT shall provide the services set forth in Exhibit A.
- B. Upon this Agreement becoming effective, CONSULTANT is authorized to begin services as set forth in Exhibit A.
- C. If authorized in writing by CLIENT, and agreed to by CONSULTANT, services beyond the scope of this Agreement will be performed by CONSULTANT for additional compensation.

**ARTICLE 2 - CLIENT'S RESPONSIBILITIES**

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**2.01 General**

- A. CLIENT shall have the responsibilities set forth herein and in Exhibit C.

## **ARTICLE 3 - TIMES FOR RENDERING SERVICES**

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- 3.01** CONSULTANT's services will be performed within the time period or by the date stated in Exhibit B.
- 3.02** If CONSULTANT's services are delayed or suspended in whole or in part by CLIENT, CONSULTANT shall be entitled to equitable adjustment of the time for performance and rates and amounts of compensation provided for elsewhere in this Agreement in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

## **ARTICLE 4 - PAYMENTS TO CONSULTANT**

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### **4.01 Methods of Payment for Services of CONSULTANT**

- A. CLIENT shall pay CONSULTANT for services rendered under this Agreement, as follows:
1. An amount equal to CONSULTANT's direct labor costs plus overhead for the services of CONSULTANT's employees engaged on the project, plus reimbursable expenses, plus CONSULTANT's subconsultants' and/or subcontractors' charges plus a fixed fee.
  2. The CONSULTANT's Reimbursable Expenses Schedule is attached to this Agreement as Exhibit B-1, and is supplemented by Project-specific expenses outlined in Exhibit B-2.
  3. CONSULTANT may alter the distribution of compensation between individual project tasks noted in Exhibit A to be consistent with services actually rendered, but shall not exceed the total compensation amount unless approved in writing by the CLIENT.
  4. The total estimated compensation for CONSULTANT's services, including all labor, overhead, profit, reimbursable expenses and CONSULTANT's subconsultants' and/or subcontractors' charges, is \$147,050.
  5. The estimated total compensation is conditioned on Contract Times to complete the services presented in Exhibit A not exceeding 12 months. Should the Contract times to complete said services extend beyond this period, the total compensation to CONSULTANT shall be appropriately adjusted.
  6. The portion of the amounts billed for CONSULTANT's services will be based on the applicable Direct Labor Costs for the cumulative hours charged to the project during the billing period by CONSULTANT's employees plus overhead, reimbursable expenses, CONSULTANT's subconsultant's and/or subcontractor's charges and the proportionate portion of the fixed fee.
  7. Direct labor costs means salaries and wages paid to employees, but does not include payroll related costs or benefits.
  8. Overhead includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto; the cost of general and administrative overhead which includes salaries and wages of employees engaged in business operations not directly chargeable to projects, plus non-project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance, and other operating costs. Overhead shall be computed

as a percentage of direct labor costs in accordance with the procedures specified in the Federal Accounting Regulations (FAR). Fixed fee is the amount paid to CONSULTANT by CLIENT as margin or profit and will be computed as a percentage of the sum of the direct labor costs and the overhead.

9. Direct labor costs and overhead applied to direct labor costs will be adjusted annually (as of May 1<sup>st</sup>) to reflect equitable changes in the compensation payable to CONSULTANT.

#### **4.02 Other Payment Provisions**

- A. *Preparation of Invoices.* Invoices will be prepared in accordance with CONSULTANT's standard invoicing practices and will be submitted to CLIENT by CONSULTANT no less frequently than monthly. The amount billed in each invoice will be calculated as set forth in Exhibit B.
- B. *Payment of Invoices.* Invoices are due and payable upon receipt. If CLIENT fails to make any payment due CONSULTANT for services and expenses within 30 days after receipt of CONSULTANT's invoice therefor, a late fee of \$500.00 will be assessed for each 30 days from invoice date. In addition, CONSULTANT may, after giving seven days written notice to CLIENT, suspend services under any Task Order issued under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.
- C. *Disputed Invoices.* Invoices are considered accepted without exception unless CONSULTANT is notified within 10 days of the invoice date. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.
- D. *Payments Upon Termination.*
  1. In the event of any termination under Exhibit F, Section VI, CONSULTANT will be entitled to invoice CLIENT and will be paid for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
  2. In the event of termination by CLIENT for convenience or by CONSULTANT for cause, CONSULTANT, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice CLIENT and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with CONSULTANT's subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in this Agreement.
- E. *Records of CONSULTANT's Costs.* Records of CONSULTANT's costs pertinent to CONSULTANT's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify CONSULTANT's charges and upon CLIENT's timely request, copies of such records will be made available to CLIENT at cost.
- G. *Legislative Actions.* In the event of legislative actions after the Effective Date of this Agreement by any level of government that impose taxes, fees, or costs on CONSULTANT's services or other costs in connection with the Agreement or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by CLIENT as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to CONSULTANT's estimated total compensation.

#### **4.03 Other Provisions Concerning Payments**

- A. Estimated Compensation Amounts

1. CONSULTANT's estimate of the amounts that will become payable are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to CONSULTANT under the Agreement.
2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to CONSULTANT that a compensation amount thus estimated will be exceeded, CONSULTANT shall give CLIENT written notice thereof. Promptly thereafter, CLIENT and CONSULTANT shall review the matter of services remaining to be performed and compensation for such services. CLIENT shall either agree to such compensation exceeding said estimated amount or CLIENT and CONSULTANT shall agree to a reduction in the remaining services to be rendered by CONSULTANT, so that total compensation for such services will not exceed said estimated amount when such services are completed.

**B. Adjustments**

1. CONSULTANT's compensation is conditioned on time to complete the Assignment not exceeding the time identified in Article 3 - Times for Rendering Services. Should the time to complete the Assignment be extended beyond this period due to reasons not the fault of and beyond the control of CONSULTANT, the total compensation to CONSULTANT shall be appropriately adjusted.
2. If used, the Standard Hourly Rates Schedule and Reimbursable Expenses Schedule, will be adjusted annually as of January 1 to reflect equitable changes to the compensation payable to CONSULTANT.

**C. Reimbursable Expenses**

Reimbursable Expenses means the actual expenses incurred by CONSULTANT or SUBCONSULTANT's directly in connection with the Assignment, including the categories and items listed in Exhibit B-2.

**D. For Additional Services**

CLIENT shall pay CONSULTANT for all services not included in the scope of this Agreement on the basis agreed to in writing by the parties at the time such services are authorized by CLIENT.

**ARTICLE 5 - DESIGNATED REPRESENTATIVES**

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- 5.01** Contemporaneous with the execution of this Agreement, CONSULTANT and CLIENT shall each designate specific individuals as CONSULTANT's and CLIENT's representatives with respect to the services to be performed or furnished by CONSULTANT and responsibilities of CLIENT under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of their respective party.

**ARTICLE 6 - CONTENT OF AGREEMENT**

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**6.01** The following Exhibits are incorporated herein by reference:

|           |  |
|-----------|--|
| Exhibit A | CONSULTANT's Scope of Services             |
| Exhibit B | Fee  |
| Exhibit C | CLIENT's Responsibilities                  |
| Exhibit D | Insurance                                  |
| Exhibit E | Sample Task Order (On-Call Contracts Only) |
| Exhibit F | General Terms & Conditions                 |

**6.02 Total Agreement**

- A. This Agreement (consisting of pages 1 to 6 inclusive, together with the Exhibits identified in paragraph 6.01) constitutes the entire Agreement between CLIENT and CONSULTANT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

**CLIENT:**

**CHAUTAUQUA COUNTY**

By: Gregory J. Edwards

Title: County Executive

Date Signed: \_\_\_\_\_

Address for giving notices:

454 North Work Street  
Falconer, NY 14733-1197

Designated Representative (paragraph 5.01.A):

George Spanos

Title: DPP Director

Phone Number: (716) 665-8400

Facsimile Number: (716) 665-4496

E-Mail Address: Gspanos@co.chautauqua.ny.us

**CONSULTANT:**

**TVGA CONSULTANTS**

By: Robert R. Napieralski

Title: Principal

Date Signed: FEB. 5, 2008

Address for giving notices:

One Thousand Maple Road  
Elma, NY 14059-9530

Designated Representative (paragraph 5.01.A):

Daniel E. Riker

Title: Project Manager

Phone Number: (716) 655-8842

Facsimile Number: (716) 655-0937

E-Mail Address: driker@tvga.com

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**EXHIBIT A**

**SCOPE OF SERVICES**

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## **EXHIBIT A SCOPE OF SERVICES**

### **Consultant's Services**

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#### **1.0 GENERAL DISCUSSION**

The Statement of Work (SOW) outlined herein has been developed by TVGA Consultants for the completion of a Remedial Investigation/Alternatives Analysis (RI/AA) Report for the former Edgewood Warehouse Site located at 320 South Roberts Road, Dunkirk, New York (subject site). Figure 1 is included as a Site Location Map. This SOW has been prepared on behalf of the Chautauqua County Department of Public Facilities in association with the environmental restoration and redevelopment of the subject site under the Environmental Restoration Program administered by the New York State Department of Environmental Conservation (NYSDEC). Chautauqua County has been awarded State financial assistance under Title 5 of the Clean Water/Clean Air Bond Act of 1996 for the investigation of the subject site. The purpose of the RI/AA is to investigate the nature and extent of contamination at the subject site and to develop and evaluate remedial alternatives, as appropriate.

The site consists of approximately seven acres located within the City of Dunkirk limits. The site contains an inactive warehouse, and a second smaller building that is currently unused. The remainder of the property consists primarily of aged asphalt and gravel parking areas. The location and configuration of the tax parcel that comprises the subject site is depicted on Figure 2.

The property has a long history of industrial, manufacturing and commercial use, having been utilized as a machine shop and for storage and the manufacture of locomotives, military equipment, steel tubes and heat exchangers, and wood products. Based upon previous investigations of the subject property and adjoining properties, the following environmental conditions were identified in conjunction with the subject site:

- Asbestos containing materials are present in the warehouse building and asbestos waste from historic building demolition activities may be buried on site.
- Contaminated fill/soil and groundwater has been documented on the property;
- Electrical equipment that contains polychlorinated biphenyls (PCBs) may be present within the on-site buildings;
- Radiological sources were historically utilized on-site and there is the potential for the presence of radioactive materials on-site;
- Contaminated sediment and/or sludge was documented in on-site pits, drains, and vaults; and
- The subject property is hydraulically downgradient from the adjacent Roblin and Alumax sites, where historic soil, groundwater and surface contamination has been documented.

The following sections outline the primary tasks associated with the completion of the RI/AA for the subject site. Information and data obtained during preliminary stages of the site investigation (e.g., review of historical records) will direct the nature and extent of subsequent phases of the investigation.

#### **2.0 REMEDIAL INVESTIGATION/ALTERNATIVES ANALYSIS REPORT WORK PLAN**

TVGA will prepare a RI/AA Work Plan that provides a detailed description of the approach to be employed in completing the RI/AA. The Work Plan will be prepared for NYSDEC review and will include the items discussed below.

## **2.1 Scoping of RI/AA**

Scoping of the RI/AA will involve a detailed review of historical information and completion of site reconnaissance.

TVGA will complete a review of historical information pertaining to the subject site and operations occurring thereon. This historical review will focus on on-site chemical use and storage, waste generation and disposal, and environmental discharges. Existing information will be supplemented through the review of additional records and the performance of interviews with former facility employees.

A site reconnaissance will be completed to familiarize ourselves with the subject site, assess the subject site for recognized environmental conditions, and evaluate site accessibility for equipment to be utilized during the site investigation phase of work.

Based upon this information, and in consultation with Chautauqua County and the NYSDEC, TVGA will define the remedial goals of the project consistent with 6 NYCRR Part 375 and reflective of the intended end use of the property, and will identify likely decisions, data requirements and the schedule for the project.

## **2.2 Remedial Investigation Work Plan**

TVGA will prepare a Remedial Investigation (RI) Work Plan detailing the methods to be employed to characterize the subject site. The RI Work Plan will present the initial evaluation of the existing data and background information performed during the scoping process, and will define the scope and objectives of site characterization activities, to the extent possible. Because the RI/AA process is dynamic and iterative, the RI Work Plan will be modified during the site characterization process to incorporate new information and refined project objectives, as necessary.

The RI Work Plan will identify the methods to be utilized to generate sufficient information to:

- Identify and characterize the sources of contamination;
- Describe the amount, concentration, persistence, mobility, state, and other significant characteristics of the contamination present;
- Evaluate the extent to which contaminants have migrated or are expected to migrate and whether future migration may pose a threat to human health or the environment;
- Identify all actual routes of exposure;
- Identify actual populations and environmental receptors which may be at risk;
- Define hydrogeological factors (e.g., soil permeability, depth to saturated zone, hydrologic gradients, proximity to a drinking water aquifer, flood plain, or wetland);
- Describe groundwater characteristics and current and potential groundwater use;
- Identify active private wells within 1,000 feet of the subject site and be prepared to develop an appropriate sampling plan for them, if necessary;
- Identify potentially affected surface water classifications and existing use designations;
- Quantitatively describe the property's contribution to an air, land, water, biota, or food chain contamination problem;

- Determine the extent to which contamination levels pose an unacceptable risk to public health and/or the environment;
- Identify local ordinances and rules which may pertain to the site; and
- Discuss other appropriate factors.

### **2.3 Site Specific Field Sampling Plan**

The Field Sampling Plan (FSP) will be prepared to identify and describe: (1) sampling objectives; (2) sampling equipment and methods; (3) sample types, locations and frequency; (4) sample identification system; (5) sample handling and analysis; (6) field documentation and record keeping procedures; and (7) a schedule of events and deliverables.

### **2.4 Quality Assurance/Quality Control Plan**

The Quality Assurance/Quality Control (QA/QC) Plan will address all elements of the site investigation and will include:

- A project description;
- A project organization chart illustrating the lines of responsibility of the sampling personnel;
- Quality assurance objectives for data;
- Sample custody procedures;
- The type and frequency of calibration procedures for field and laboratory instruments, internal quality control checks, and quality assurance performance audits and system audits;
- Preventative maintenance procedures and schedule and corrective action procedures for the field and laboratory instruments;
- Specific procedures to assess data precision, representativeness, comparability, accuracy, and completeness of specific measurement parameters; and
- Data documentation and tracking procedures.

### **2.5 Health and Safety Plan**

A site specific Health and Safety Plan (HASP) complying with 29 CFR 1910.120 will be prepared prior to the commencement of field activities. The HASP will provide a site background discussion and describe personnel responsibilities, protective equipment, health and safety procedures and protocols, decontamination procedures, personnel training, and type and extent of any necessary medical surveillance. Procedures for protecting third parties, such as visitors or the surrounding community, will also be specified in the HASP.

### **2.6 Citizen Participation Plan**

The Citizen Participation (CP) Plan will describe the types of information to be provided to the public and outline the opportunities for community comment and input during the RI/AA. This Plan will include a preliminary list of potentially interested parties, a list of information repositories, community outreach, and other appropriate citizen participation activities. Furthermore, the CP Plan will describe the procedures to be used to ensure that:

- Pertinent documents will be readily available to the public;
- Communication with the public takes place at critical decision points in the remedial program;
- Informational notices are mailed out and/or announced in the local media;

- Project staff are identified and made accessible to the public; and
- Interested and/or affected parties are identified.

### **3.0 REMEDIAL INVESTIGATION**

The remedial investigation will be performed in accordance with the RI/AA Work Plan and will involve the field work necessary to complete the site characterization program, including but not limited to: a geophysical survey, test pit excavations, test borings, monitoring well installation, environmental sampling and measurement, field screening, laboratory analyses, surveying, and data validation. The remedial investigation will provide sufficient information to:

- Further identify the study area of the RI/AA;
- Identify potential remedial alternatives;
- Identify probable remedial goals and determine the extent to which they have been exceeded or contravened; and
- Perform a qualitative health and environmental risk assessment, as necessary.

#### **3.1 Preliminary Scope of Remedial Investigation**

The preliminary scope of the site characterization program to be detailed in the RI/AA Work Plan is outlined in the following subsections. This preliminary scope is intended to define the initial extent of site characterization activities and will be modified as necessary to account for information obtained during project scoping. Data gathered as a result of these activities will be utilized to determine the necessity for additional investigation of the subject site.

##### **3.1.1 Subsurface Investigation**

A subsurface investigation will be conducted to characterize soil and groundwater conditions occurring on the subject site. The investigation will include radiological and geophysical surveys, and the installation of test pits, test borings and monitoring wells to facilitate the collection and chemical analysis of soil/fill and groundwater samples. The preliminary scope of the subsurface investigation will include the following:

- A radiological survey will be completed to confirm or deny the presence of radioactive materials (e.g. radioactive source materials used for the inspection of steel tubes and welds).
- A geophysical survey will be completed to investigate density anomalies (e.g. cisterns, tunnels, underground utilities) potentially present in suspect areas identified during the historical review and site reconnaissance.
- Test pits will be completed in areas of the subject site where the geophysical survey results define density anomalies. Additionally, test pits will be excavated in areas across the subject site and will be the primary means to:
  - Characterize surficial geology across the site;
  - Investigate the thickness of fill material;
  - Identify and delineate areas of subsurface contamination via the field screening and chemical analysis of soil samples.

It is anticipated that this will include three days of test pit excavations. We have assumed Chautauqua County will provide an excavator and operator to complete the test pits.

- Two days of test probing will be performed on the project site, primarily within the warehouse to facilitate the classification, field screening and collection of subslab soil samples for laboratory analysis.
- Four test borings will be drilled on the project site with a drill rig to facilitate the classification, field screening and collection of subsurface soil samples for laboratory analysis. All four of the test borings will be completed with groundwater monitoring wells to supplement the existing monitoring well network and enable the confirmation of groundwater flow direction and gradient, and the hydraulic conductivity of the upper-most water-bearing zone, as well as the collection of groundwater samples for chemical analysis.
- Test boring, test probe and monitoring well locations will be based upon the project objectives, ease of access, freedom from obstructions, and safety considerations (appropriate set backs from overhead wires and buried services).
- Previous investigations of the site and adjoining properties indicated the presence of fill material consisting of slag, foundry sand, soil, gravel, brick and concrete. The fill material extended from the ground surface to a depth of 2 to 7 feet below grade. The fill overlies a heterogeneous mixture of fine-grained glacial deposits ranging from clayey silts to silty clay units with varying percentages of sand and gravel. Groundwater was found in a confined or semi-confined condition within these glacial deposits, which were generally comprised of an upper, lacustrine unit underlain by a thin till unit that unconformably overlies shale bedrock, which occurs at depths ranging from 2 to 15 feet below the ground surface. Bedrock core samples collected during the investigation of the adjoining Roblin Steel Site indicate that the upper 3 to 5 feet of bedrock is slightly to severely weathered and consists mainly of dark gray to gray shale.
- The average depth of the monitoring wells will be 20 feet bgs. All test borings will be advanced using 4-1/4-inch I.D. hollow stem augers with continuous split spoon sampling. The wells will be constructed of 2-inch Schedule 40 screens and risers, and will be fitted with locking caps. Rock coring will be performed when competent rock is encountered and will be performed in accordance with ASTM D2113-83.
- All subsurface soil/fill samples collected from test pits, test probes and test borings will be screened for Total Organic Vapors (TOVs) using a photoionization detector. Visual observations will also be made to identify discolored or stained soils. Field screening results will be used to select up to 27 soil samples for chemical analysis.
- The four newly installed monitoring wells will be developed and, along with the eight existing wells, will be gauged to determine static water levels for the purpose of confirming groundwater flow direction and gradient.
- In-situ hydraulic conductivity tests will be completed on the four new monitoring wells to determine the permeability of the upper most water-bearing unit.
- Representative groundwater samples will be obtained from the four new wells for chemical analysis. In addition, the eight existing groundwater monitoring wells at the project site will be purged and sampled. These wells were installed during the course of the 1999 Phase II ESA and have only been sampled once.
- Soil/fill and groundwater samples will be submitted and analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs) and PCBs appearing on the Target Compound List (TCL) using

NYSDEC Analytical Services Protocol (ASP) Method 2000. The samples will also be analyzed for the metals appearing on the Target Analyte List (TAL) using ASP methods. All chemical analyses will be performed by a laboratory that is accredited under the New York State Environmental Laboratory Approval Program (ELAP) Contract Laboratory Program (CLP). In addition, eight soil samples will be analyzed for asbestos using Phase Contrast Microscopy (PCM).

- A total of four indoor air quality samples will be collected from within the warehouse using the USEPA's TO-15 methodology. The TO-15 analysis, as written by the EPA, refers to a specific list of 62 regulated compounds. Of particular concern is the known presence of solvents (e.g. TCE and its decomposition products) in soils and groundwater located on the project site and adjoining properties.
- A survey will be completed to locate the actual position of the test borings, monitoring wells, monitoring well casing elevations, test pits, and sample locations. These locations will be superimposed on the base map.

### **3.1.2 Surface Soil/Fill Investigation**

A sampling and analysis program will be implemented to characterize the chemistry of surface soil and/or fill materials. Grab samples will be collected from previously identified areas of concern (e.g., locations of former drum storage, areas of stained soil, etc.), as well as from points selected to represent conditions across the subject site. We have estimated that 20 surface soil samples will be collected for analysis. These samples will be analyzed for SVOCs and PCBs appearing on the TCL and the metals appearing on the TAL, and will be supplemented by the background data collected in conjunction with the RI/AA of the former Roblin Steel site, which adjoins the subject site.

### **3.1.3 Investigation of Sumps, Vaults and Pits**

Sumps, vaults and pits that were not investigated during previous assessments of the project site will be examined to determine their probable functions and their contents will be sampled and analyzed for TCL VOCs and SVOCs, PCBs and TAL metals. We have estimated that 4 samples will be collected from these structures for chemical analysis.

## **4.0 DATA EVALUATION AND ASSESSMENT OF RISKS**

Once the accuracy and precision of the data has been verified, evaluation of the data will be performed. All site investigation data will be analyzed and the results of the analyses will be presented in an organized and logical manner so that the relationship between site investigation results for each medium is apparent. Typical activities associated with data evaluation include:

- Data review, reduction and tabulation;
- Comparison with applicable regulatory levels; and
- Environmental fate and transport modeling/evaluation.

Using these data, a risk assessment will be performed to qualitatively assess the potential human health and environmental risks associated with the site. The following activities are typically associated with this task:

- Identification of contaminants of concern;
- Exposure assessment;

- Toxicity assessment; and
- Risk Characterization.

## **5.0 REMEDIAL INVESTIGATION REPORT**

A RI Report will be prepared which: (1) summarizes and documents the investigative methods employed to characterize the site; (2) describes the physical characteristics of the site; (3) defines the nature and extent of contamination; (4) presents the results of contaminant fate and transport modeling/evaluations; (5) identifies potential health and environmental risks posed by the site; and (6) provides recommendations relative to future work requirements and remedial action objectives.

## **6.0 DEVELOPMENT AND ANALYSIS OF REMEDIAL ALTERNATIVES**

### **6.1 Development of Alternatives**

A range of remedial alternatives will be developed to address contaminated media at the site, as deemed necessary in the RI, and to provide adequate protection of human health and the environment. The potential alternatives will encompass a range of alternatives including treatment, containment and removal options.

General response actions will be identified for each medium of interest. General response actions typically include containment, excavation, extraction, treatment, disposal or other actions, singly or in combination to satisfy remedial action objectives. Volumes or areas of media to which general response actions may apply will be identified. Subsequently, treatment technologies for each general response action will be identified and screened relative to their technical and economic feasibility for implementation at the site, and the potential technologies will be combined into media-specific or site-wide alternatives. The alternatives will be screened on a general basis with respect to their effectiveness, implementability, and cost, to limit the number of alternatives that undergo the detailed analysis and to provide consideration of the most promising options.

### **6.2 Detailed Analysis of Alternatives**

A detailed analysis of each alternative will be completed in accordance with the requirements outlined in 6 NYCRR Part 375-1.10, Remedy Selection. An individual analysis of each alternative will be performed relative to the following criteria:

- Overall protection of human health and the environment;
- Compliance with Standards, Criteria and Guidance;
- Short-term effectiveness;
- Long-term effectiveness and permanence;
- Reduction of toxicity, mobility, or volume;
- Feasibility; and
- Community Acceptance.

Furthermore, a comparative analysis of all of the remedial alternatives with respect to each other will be completed in terms of the above listed criteria.

## **7.0 ALTERNATIVES ANALYSIS REPORT**

An Alternatives Analysis (AA) Report will be prepared that describes the process utilized to develop and screen remedial alternatives, presents the results of the detailed analysis of alternatives, and identifies the most suitable remedy considering the remedial action objectives. The AA will present sufficient

information to enable the preparation of a Proposed Remedial Action Plan (PRAP), which summarizes the proposed remedy for public review and comment.

## **8.0 FINAL RI/AA REPORT**

A Final RI/AA Report that addresses comments from the NYSDEC, NYSDOH and Chautauqua County will be prepared. As part of this process, responses to one (1) round of comments on the draft reports from each of these agencies will be prepared, and the documents will be revised after obtaining agency concurrence on said responses. The Final RI/AA Report will serve as the basis for the PRAP and Record of Decision (ROD) for the project.

## **9.0 PROPOSED REMEDIAL ACTION PLAN**

A draft Proposed Remedial Action Plan (PRAP) will be prepared for the property by incorporating the project background, remedial investigation findings, and analysis of remedial alternatives in a template PRAP provided by the NYSDEC.

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**EXHIBIT B**

**FEE**

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## **EXHIBIT B HOURLY FEE**

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### Standard Hourly Rates Method of Payment

- A. A. CLIENT shall pay CONSULTANT for Scoped Services set forth in Exhibit A, as follows:
1. The total compensation for services shall not exceed \$147,050.
  2. The CONSULTANT's overhead rate (indirect labor rate) shall be 1.65% of the direct labor costs.
  3. The CONSULTANT's fixed fee shall be 7.5% of the sum of the direct labor costs.
  4. Exhibit B-2 presents a detailed breakdown of the estimated direct labor costs, overhead, reimbursable expenses, subconsultant and/or subcontractor charges, and profit.
  5. CONSULTANT's Reimbursable Expense Schedule is presented as Exhibit B-1 and is supplemented by Project-specific expenses set forth in Exhibit B-2.
  6. The direct rates shown in Exhibit B-2 are conditioned on Contract Times to complete the work not exceeding twelve months. Should the Contract Times to complete the work be extended beyond this period, the total compensation to CONSULTANT shall be adjusted appropriately.

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**EXHIBIT B-1**

**REIMBURSABLE EXPENSE SCHEDULE**

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## 2007 REIMBURSABLE EXPENSE RATE SCHEDULE

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**CLASSIFICATION**

**RATE**

|                               |                      |
|-------------------------------|----------------------|
| Fax                           | \$0.20/page          |
| Copies (black & white/color)  | \$0.20/page          |
| Blue Print Copies             | \$2.50/sheet         |
| Reproducible Copies (mylar)   | \$7.00/sheet         |
| Reproducible Copies (paper)   | \$5.00/sheet         |
| Mileage                       | Current Federal Rate |
| Video Camcorder               | \$50.00/day          |
| Long Distance Telephone Calls | At Cost              |
| Meals and Lodging             | At Cost              |
| CD's                          | \$2.00/each w/case   |
| Equipment Rental              | At Cost              |
| Subcontractors                | At Cost              |

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## **EXHIBIT B-2**

### **DETAILED COST BREAKDOWN**

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|                              |             |             |             |              |              |              |              |              |             |              |             |             |             |             |             |             |             |             |             |               |
|------------------------------|-------------|-------------|-------------|--------------|--------------|--------------|--------------|--------------|-------------|--------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------|
| COST/TASK (labor and direct) | \$ 2,928.40 | \$ 4,538.40 | \$ 2,346.80 | \$ 14,505.90 | \$ 10,452.70 | \$ 14,142.70 | \$ 14,888.70 | \$ 13,487.90 | \$ 8,235.20 | \$ 19,951.80 | \$ 8,711.80 | \$ 4,951.80 | \$ 3,647.50 | \$ 2,935.00 | \$ 5,465.00 | \$ 4,267.50 | \$ 4,557.50 | \$ 4,530.00 | \$ 2,517.50 | PROJECT TOTAL |
|                              |             |             |             |              |              |              |              |              |             |              |             |             |             |             |             |             |             |             |             | \$ 147,002.10 |

\$147,050.00  
per George Spares  
page 1 of 1  
MS Langebartel  
10-22-07

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**EXHIBIT C**

**CLIENT'S RESPONSIBILITIES**

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## EXHIBIT C

### CLIENT's Responsibilities

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In addition to other responsibilities of CLIENT as set forth in this Agreement, CLIENT shall:

- A. Provide CONSULTANT with all criteria and full information as to CLIENT's requirements for a Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which CLIENT will require to be included in the Drawings and Specifications; and furnish copies of CLIENT's standard forms, conditions, and related documents for CONSULTANT to include in the Bidding Documents, when applicable.
- B. Furnish to CONSULTANT any other available information pertinent to a Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of a Specific Project.
- C. Following CONSULTANT's assessment of initially-available Project information and data and upon CONSULTANT's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable CONSULTANT to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - 4. Explorations and tests of subsurface conditions at or contiguous to the Specific Project Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
  - 5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Specific Project, the Specific Project Site, and adjacent areas.
  - 6. Data or consultations as required for the Specific Project but not otherwise identified in the Agreement or the Exhibits thereto, or the Task Order.
- D. Give prompt written notice to CONSULTANT whenever CLIENT observes or otherwise becomes aware of a Hazardous Environmental Condition of a nature or extent not identified in the Task Order or of any other development that affects the scope or time of performance of CONSULTANT's services, or any defect or nonconformance in CONSULTANT's services or in the work of any Contractor.
- E. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by CONSULTANT for a Specific Project (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as CLIENT deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

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**EXHIBIT D**

**INSURANCE**

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## EXHIBIT D

### Insurance

The Agreement is amended and supplemented to include the following agreement of the parties with respect to This Part of the Project.

### Insurance

A. The limits of liability for the insurance required of the Agreement are as follows:

1. By CLIENT
  - a. Workers Compensation: Statutory
  - b. Employer's Liability --
    - 1) Each Accident \$ 100,000.00
    - 2) Disease, Policy Limit \$ 500,000.00
    - 3) Disease, Each Employee \$ 100,000.00
  - c. General Liability --
    - 1) Each Occurrence (Bodily Injury and Property Damage) \$ 1,000,000.00
    - 2) General Aggregate \$ 2,000,000.00
  - d. Excess or Umbrella Liability --
    - 1) Each Occurrence \$ \_\_\_\_\_
    - 2) General Aggregate \$ \_\_\_\_\_
  - e. Automobile Liability --
    - 1) Bodily Injury \$ 1,000,000.00
      - a) Each Accident
    - 2) Property Damage \$ 1,000,000.00
      - a) Each Accident

(or)

    - 1) Combined Single Limit (Bodily Injury and Property Damage): Each Accident \$ 1,000,000.00
  - f. Other (Specify): \_\_\_\_\_ \$ \_\_\_\_\_

B. Additional Insureds

1. The following individuals or entities will be requested by the CLIENT to be listed on CONSULTANT's policies of general liability and property insurance as additional insureds:
  - a). Chautauqua County
  - b). \_\_\_\_\_
  - c). \_\_\_\_\_

|    |   |                   |                        |
|----|---|-------------------|------------------------|
| 2. | By CONSULTANT   |                   |                        |
| a. | Workers Compensation:   | Statutory         |                        |
| b. | Employer's Liability --   |                   |                        |
|    | 1) Each Accident  |                   | \$ <u>100,000.00</u>   |
|    | 2) Disease, Policy Limit  |                   | \$ <u>500,000.00</u>   |
|    | 3) Disease, Each Employee   |                   | \$ <u>100,000.00</u>   |
| c. | General Liability --  |                   |                        |
|    | 1) Each Occurrence (Bodily Injury and Property Damage)                      |                   | \$ <u>1,000,000.00</u> |
|    | 2) General Aggregate  |                   | \$ <u>1,000,000.00</u> |
| d. | Excess or Umbrella Liability --   |                   |                        |
|    | 1) Each Occurrence  |                   | \$ <u>4,000,000.00</u> |
|    | 2) General Aggregate  |                   | \$ <u>4,000,000.00</u> |
| e. | Automobile Liability --   |                   |                        |
|    | 1) Bodily Injury  |                   | \$ <u>1,000,000.00</u> |
|    | a) Each Accident  |                   |                        |
|    | 2) Property Damage  |                   |                        |
|    | a) Each Accident  |                   | \$ <u>1,000,000.00</u> |
|    | 3) Combined Single Limit (Bodily Injury and Property Damage): Each Accident |                   | \$ <u>1,000,000.00</u> |
| f. | Other (Specify):  |                   |                        |
|    | Professional Liability  | Each Occurrence   | \$ <u>1,000,000.00</u> |
|    |   | General Aggregate | \$ <u>2,000,000.00</u> |

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**EXHIBIT E**

**NOT APPLICABLE TO THIS CONTRACT**

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**EXHIBIT F**

**GENERAL TERMS & CONDITIONS**

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## EXHIBIT F

### GENERAL TERMS & CONDITIONS

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#### I. Standards of Performance

- A. The standard of care for all professional consulting and related services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by members of CONSULTANT's profession practicing under similar circumstances at the same time and in the same locality. CONSULTANT makes no warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT's services.
- B. CONSULTANT shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CLIENT shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in CLIENT-furnished information.
- C. CONSULTANT shall serve as CLIENT's prime professional. CONSULTANT may employ such CONSULTANT's subconsultants as CONSULTANT deems necessary to assist in the performance or furnishing of the services. CONSULTANT shall not be required to employ any CONSULTANT's subconsultant unacceptable to CONSULTANT. Nothing in this Agreement shall create any privity of contract between CLIENT and CONSULTANT's subconsultants, nor shall any term herein create any rights to third parties.
- D. CONSULTANT and CLIENT shall comply with applicable Laws or Regulations and CLIENT-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date may be the basis for modifications to CLIENT's responsibilities or to CONSULTANT's scope of services, times of performance, or compensation.
- E. CLIENT shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to CONSULTANT pursuant to this Agreement. CONSULTANT may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
- F. CLIENT shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of CONSULTANT.
- G. CONSULTANT shall not be required to sign any documents, no matter by whom requested, that would result in the CONSULTANT's having to certify, guarantee or warrant the existence of conditions whose existence the CONSULTANT cannot ascertain within its services for that Specific Project. CLIENT agrees not to make resolution of any dispute with the CONSULTANT or payment of any amount due to the CONSULTANT in any way contingent upon the CONSULTANT's signing any such certification.
- H. If CONSULTANT provides services during the Construction Phase of a Specific Project, CONSULTANT shall not supervise, direct, or have control over Contractor's work, nor shall CONSULTANT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

- I. CONSULTANT neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents, including Year 2000 Compliance matters.
- J. CONSULTANT shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except CONSULTANT's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by CLIENT without consultation and advice of CONSULTANT.

## **II. Authorized Project Representatives**

- A. Contemporaneous with the execution of this Agreement, CONSULTANT and CLIENT shall designate specific individuals to act as CONSULTANT's and CLIENT's representatives with respect to the services to be performed or furnished by CONSULTANT and responsibilities of CLIENT. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

## **III. Design without Construction Phase Services**

- A. It is understood and agreed that if CONSULTANT's Services do not include Project observation, or review of a Contractor's performance, or any other Construction Phase services, and that such services will be provided by CLIENT or others, then CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the CONSULTANT that may be in any way connected thereto. In such case, CONSULTANT's Scope of Services will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

## **IV. Use of Documents**

- A. All Documents are instruments of service. CONSULTANT shall retain an ownership and property interest therein (including the right of reuse at the discretion of the CONSULTANT) whether or not the Specific Project is completed.
- B. Copies of CLIENT-furnished data that may be relied upon by CONSULTANT are limited to the printed copies (also known as hard copies) that are delivered to the CONSULTANT pursuant to Exhibit C. Files in electronic media format of text, data, graphics, or of other types that are furnished by CLIENT to CONSULTANT are only for convenience of CONSULTANT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- C. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the CONSULTANT. Files in electronic media format of text, data, graphics, or of other types that are furnished by CONSULTANT to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- D. When transferring Documents in electronic media format, CONSULTANT makes no representations as to long-term compatibility, usability, or readability of Documents resulting from the use of software application packages, operating systems, or computer

hardware differing from those used by CONSULTANT at the beginning of a Specific Project.

- E. CLIENT may make and retain copies of Documents for information and reference in connection with use on the Specific Project by CLIENT. Such Documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Specific Project for which they were prepared or on any other project. Any such reuse or modification without written verification or adaptation by CONSULTANT, as appropriate for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT. CLIENT shall indemnify and hold harmless CONSULTANT from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting therefrom.
- F. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- G. Any verification or adaptation of the Documents for extensions of the Specific Project for which they were prepared or for any other project will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

#### **V. Insurance**

- A. CONSULTANT shall procure and maintain insurance as set forth in Exhibit D, "Insurance." CONSULTANT shall cause CLIENT to be listed as an additional insured on any general liability or property insurance policies carried by CONSULTANT which are applicable to a Specific Project.
- B. CLIENT shall procure and maintain insurance as set forth in Exhibit D, "Insurance."
- C. CLIENT shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause CONSULTANT to be listed as an additional insured with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. CLIENT and CONSULTANT shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to commencement of CONSULTANT's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance shall contain provisions to the effect that CONSULTANT's interests are covered and that in the event of payment of any loss or damage, the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.
- F. At any time, CLIENT may request that CONSULTANT, at CLIENT's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit D. If so requested by CLIENT, with the concurrence of CONSULTANT, and if commercially available, CONSULTANT shall obtain and shall require CONSULTANT's Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by CLIENT, and Exhibit D will be supplemented to incorporate these requirements.

## **VI. Termination**

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereunder through no fault of the terminating party.
- b. By CONSULTANT:
  - 1) upon seven days written notice if CONSULTANT believes that CONSULTANT is being requested by CLIENT to furnish or perform services contrary to CONSULTANT's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the CONSULTANT's services are delayed or suspended for more than 90 days for reasons beyond CONSULTANT's control.
  - 3) CONSULTANT shall have no liability to CLIENT on account of such termination.
- c. Notwithstanding the foregoing, neither this Agreement nor any Task Order will terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,*

a. By CLIENT effective upon the receipt of notice by CONSULTANT.

B. The terminating party under paragraphs VI.A.1 or VI.A.2 may set the effective date of termination of this Agreement at a time up to 30 days later than otherwise provided to allow CONSULTANT to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

## **VII. Controlling Law**

A. This Agreement is to be governed by the law of the state in which the principal office of the CONSULTANT is located unless the law of the state where the Work is being performed requires that the law of that state be applied.

## **VIII. Successors, Assigns, and Beneficiaries**

A. CLIENT and CONSULTANT each is hereby bound and the partners, successors, executors, administrators, and legal representatives of CLIENT and CONSULTANT (and

to the extent permitted by paragraph VIII.B, the assigns of CLIENT and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither CLIENT nor CONSULTANT may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignment from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by CLIENT or CONSULTANT to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for, or employee of, any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and CONSULTANT and not for the benefit of any other party. The CLIENT agrees that the substance of the provisions of this paragraph VIII.C shall appear in the Contract Documents.

#### **IX. Dispute Resolution**

- A. CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period not to exceed 30 days from the date of notice prior to exercising their rights under other provisions of this Agreement, or under law.
- B. The CLIENT and CONSULTANT have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement. Such dispute resolution method and procedure is set forth as follows:

CLIENT and CONSULTANT agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mediator from the American Arbitration Association Construction Mediation Panel, or someone mutually agreed to by CLIENT and CONSULTANT. CLIENT and CONSULTANT agree to equally share all costs of mediation.

#### **X. Unforeseen Environmental Condition**

- A. CONSULTANT shall have the obligation to report contamination encountered by the CONSULTANT or CONSULTANT's subconsultants or subcontractors on the Project site during the course of the project in accordance with applicable laws and regulations.
- B. Should conditions encountered on the Project site during the course of the Project warrant an upgrade in personal protective equipment beyond Level D, CONSULTANT shall be compensated for the increased costs associated with this upgrade after such costs have been authorized by the CLIENT.
- C. CLIENT acknowledges that CONSULTANT is performing professional services for CLIENT and that CONSULTANT is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined

in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site of a Specific Project in connection with CONSULTANT's activities under this Agreement.

## **XI. Allocation of Risks**

### **A. Indemnification**

1. To the fullest extent permitted by law, CONSULTANT shall defend, indemnify and hold harmless CLIENT, CLIENT's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including, but not limited to, all fees and charges of CONSULTANTS, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by the alleged negligent acts or omissions of CONSULTANT or CONSULTANT's officers, directors, partners, employees, and CONSULTANT's Subconsultants in the performance and furnishing of CONSULTANT's services under this Agreement.
2. To the fullest extent permitted by law, CLIENT shall defend, indemnify and hold harmless CONSULTANT, CONSULTANT's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including, but not limited to, all fees and charges of CONSULTANTS, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by the alleged negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, and CLIENT's consultants with respect to this Agreement.
3. To the fullest extent permitted by law, CONSULTANT's total liability to CLIENT and anyone claiming by, through, or under CLIENT for any cost, loss, or damages caused in part by the negligence of CONSULTANT and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that CONSULTANT's negligence bears to the total negligence of CLIENT, CONSULTANT, and all other negligent entities and individuals.
4. CLIENT shall not be liable to CONSULTANT and CONSULTANT shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other, regardless of: the nature of this fault; or whether it was committed by CLIENT or CONSULTANT, their employees, agents or subcontractors; or whether such liability arises in breach of contract or warranty, tort (including negligence), statute or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

## **XII. Notices**

- A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

## **XIII. Survival**

- A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

**XIV. Severability**

- A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**XV. Waiver**

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**XVI. Headings**

- A. The headings used in this Agreement are for general reference only and do not have special significance.

**XVII. Non-Exclusive and Non-Limiting Agreement**

- A. Nothing herein shall establish an exclusive relationship between CLIENT and CONSULTANT. CLIENT may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and CONSULTANT may enter into similar agreements with other clients for the same or different types of services contemplated hereunder.
- B. The cumulative scope of CONSULTANT's services and CONSULTANT's compensation, as agreed to hereunder, shall not be limited by this Agreement.

**XVIII. NYSDEC Mandated Contract Provisions**

- A. The mandatory contract clauses from the NYSDEC Procedures Handbook shall apply to services provided under this Agreement. Said clauses are included in Attachment F-1.

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**F-1**

**NYSDEC MANDATED CONTRACT PROVISIONS**

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### Mandatory Provisions

#### NON-DISCRIMINATION REQUIREMENTS

1. In accordance with 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, age, disability or marital status.

To the extent that such work is to be provided pursuant to the contract, the following paragraph is required:

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, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: a) discriminate in hiring or promotion of any individual 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.

#### WAGE AND HOUR PROVISIONS

2. 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 the 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 as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the 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.

#### RECORD-KEEPING REQUIREMENT

3. The Contractor shall maintain all books, documents, papers, and other evidence directly pertinent to the performance of work under this Contract in accordance with generally acceptable accounting principles and practices consistently applied, and 40 CFR Part 30 in effect during the term of this Contract. The municipality, the Department of Environmental Conservation, the State Comptroller, the State Attorney General, the State Department of Labor, and, in the event of federal funding, the USEPA, the Comptroller General of the United States, the United States Department of Labor or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying for a period of six years following final payment or the termination of this Contract whichever is later, and any extensions thereto. These books, records, documents and other evidence shall be accessible within the State of New York to the agencies identified above for the time period stated above. "Termination of this contract," as used in this clause, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.

## CONFLICT OF INTEREST

4. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Municipality.

An organizational conflict of interest exists when the nature of the work to be performed under this Contract may, without some restriction on future activities, either result in an unfair competitive advantage to the Contractor or impair the Contractor's objectivity in performing the work for the Municipality.

The Contractor agrees that if an actual, apparent or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Municipality and the State Department of Environmental Conservation. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Municipality, to avoid, mitigate, or minimize the actual or potential conflict.

Remedies— The Municipality may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the contractor was aware of a potential conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose or misrepresent relevant information to the Municipality, the Municipality may terminate the contract, or pursue such other remedies as may be permitted by law or this contract. The terms of other applicable contract provisions regarding termination shall apply to termination by the Municipality pursuant to this clause.

The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this clause.

- a. In addition to the requirements of the above clauses with respect to "Organizational Conflicts of Interest," the following provision with regard to employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

The Contractor agrees to notify the Department and the Municipality immediately of any actual, apparent or potential personal conflict of interest with regard to any employee, subcontractor employee, or consultant working on or having access to information regarding this contract, as soon as the Contractor becomes aware of such conflict. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Municipality will notify the Contractor of the appropriate action to be taken.

- b. To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.
- c. The Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, have been reported to the Department and the Municipality. Such certification must be signed by a senior executive of the contractor and submitted in accordance with instruction provided by the Municipality. Along with the annual certification, the Contractor shall also submit an update of any changes in the conflict of interest plan submitted with its proposal for this

contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

- d. The Contractor recognizes that employees in performing this contract may have access to data, either provided by the Department or the Municipality or first generated during contract performance, of a sensitive nature which should not be released without Department/Municipality approval. Therefore, the Contractor agrees to obtain confidentiality agreements from all such employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees that the employee will not disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Municipality. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the contractor must provide immediate advance notification to the Municipality/Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.
- e. The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Municipality.

#### AFFIRMATIVE ACTION

- 5. (a) The Contractor agrees to be bound by the provisions of New York State Executive Law Article 15-A, Sections 312, 313 and 316 and the regulations promulgated thereunder.

As provided thereunder, the Contractor is required to make good faith efforts to solicit the meaningful participation of minority and women owned business enterprises identified in the Directory of Certified Businesses provided by the New York State Department of Economic Development's Division of Minority and Women's Business Development.

(b) The Contractor agrees to include the requirements set forth in paragraph (a) above and paragraphs (c), (d), and (e) and (f) below in every subcontract in such a manner that the provisions will be binding upon each subcontractor as to work in connection with such contract. For the purpose of this paragraph, a "subcontract" shall mean an agreement providing for a total expenditure in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon in which a portion of Contractor's obligation under a State contract is undertaken or assumed.

(c) 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. For purposes of this article, affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(d) 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.

(e) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the 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.

(f) The Contractor also agrees to incorporate into any contract with subcontractors, contractual provisions applicable to record keeping, reporting, notice requirements and actions determined to be necessary by the Department to implement the requirements of the Minority/Women Business Enterprise--Equal Employment (M/WBE-EEO) utilization plan, and of Executive Law Article 15-A, regulations promulgated thereunder, and other applicable law and regulations.