

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
NEW YORK WORKS II ENVIRONMENTAL RESTORATION PROJECT

In the Matter of the
implementation of a
Remedial Program for

NYWII ERP AGREEMENT
Index No. NYWII-E915213-12-14

1318 Niagara Street
DEC Site Number: **E915213**
1318 Niagara Street
Buffalo, New York 14213

Hereinafter referred to as "Site"

by:

City of Buffalo
920 City Hall, 65 Niagara Square
Buffalo, New York 14202

Hereinafter referred to as "Municipality"

WHEREAS, the New York State Department of Environmental Conservation ("Department" or "NYSDEC") is authorized by Article 56 of the New York State Environmental Conservation Law (hereinafter the "ECL") to address contamination at municipal sites; and

WHEREAS, the Legislature has determined that the preservation, enhancement, restoration and improvement of the quality of the State's environment is one of government's most fundamental obligations; and

WHEREAS, Chapter 54, Laws of 2013 (the "Law of 2013"), provides New York Works funding for services, expenses, and indirect costs related to various environmental projects including, but not limited to, environmental restoration projects. The Law of 2013 allows the Department to enter into agreements with municipalities to undertake environmental restoration projects on behalf of a municipality upon request, provided that the municipality shall provide ten percent of the total project costs (hereinafter referred to as "NYWII ERP Agreement"); and

WHEREAS, the Legislature authorized the Department to develop and implement environmental restoration investigation and remediation projects for certain properties held in title by them; and

WHEREAS, the Municipality submitted an Application requesting that the Department undertake the development and implementation (i.e., the remedial design and remedial construction) of an environmental restoration remediation project (the "Project"), the purpose and scope of which is set forth in the Record of Decision ("ROD") provided in Exhibit A of this NYWII ERP Agreement, on the Site that is described in Exhibit B by metes and bounds and by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor; and

WHEREAS, the Municipality agrees to comply with all terms and conditions of this NYWII ERP Agreement; and

WHEREAS, the Municipality submitted an approvable Application, including submission of its documentation of its authorization to enter into this NYWII ERP Agreement, and of its authorization of the person signing the same to do so; and

WHEREAS, the Project was given a priority ranking based on a score derived from information provided in the Application and is eligible to participate in NYWII ERP; and

WHEREAS, the Municipality has disclosed all responsible party payments received related to the Site prior to entering into this Agreement. Except as provided herein relative to responsible party funding, the Municipality may use any other funding available (i.e., federal, State or other private party monies) towards its cost share; and

WHEREAS, the Department's execution of this NYWII ERP Agreement is made in reliance upon the information provided by, and representations of, the Municipality in its application papers and in this NYWII ERP Agreement; and

WHEREAS, the Municipality has complied, and commits to comply, with the requirements for municipalities established under Article 56 of the ECL.

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

I) Duties and responsibilities of the Department and the Municipality.

A) The Department, as required by the scope of the Project, shall:

- 1) implement a Citizen Participation Plan (CPP) for the Project consistent with DER-23; and
- 2) design and implement the remedy set forth in the ROD; and
- 3) prepare any necessary Environmental Easement (EE) documents for the Municipality's execution; and
- 4) prepare any necessary Site Management Plan (SMP).

B) The Municipality shall:

- 1) provide necessary assistance to the Department in the implementation of the Site CPP, including providing venues for meetings and contact information; and
- 2) execute and implement any Department prepared EE; and

- 3) implement the SMP, if one is required under this NYWII ERP Agreement, including all operation, maintenance and monitoring; and
- 4) provide the required Periodic Review Reports (PRR) as set forth in the SMP.

In the event that the remedy for the Site, or any Work Plan for the Site, requires a SMP as a consequence of operation, maintenance, and monitoring requirements, including reliance upon institutional or engineering controls, the Municipality shall file the initial PRR on the first day of the eighteenth month following the anniversary of the start of the SMP and continuing at the Department designated period until the Department notifies the Municipality in writing that such PRR may be discontinued.

Such PRR shall be signed by a Professional Engineer or by a qualified environmental professional as defined in 6 NYCRR 375-1.2(ak) approved by the Department to perform that function and certified under penalty of perjury that the institutional and/or engineering controls are unchanged from the previous certification and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a violation or failure to comply with the approved SMP.

The Municipality shall notify the Department within twenty-four (24) hours of discovery of any breach, upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, the Municipality shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the PRR required by this.

The Municipality can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

II) Allowable Use

The ROD determined that the Site will be used for Commercial Use, and the Municipality agrees for itself and for its lessees and successors in title that any proposed change to the Contemplated Use shall be governed by the provisions of ECL § 56-0511 and any implementing regulations thereto.

III) Enforcement and Force Majeure

This NYWII ERP Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. The Municipality shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this NYWII ERP Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within ten (10) days of when it obtains knowledge of any such event. The Municipality shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this NYWII ERP Agreement. The Municipality shall have the burden of proving by a preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

IV) Entry upon Site

The Municipality hereby agrees to provide access to the Site and to all relevant information regarding activities that may have involved hazardous waste at the Site in accordance with the provisions of ECL § 56-0515. Such access shall be for purposes of implementing any investigation, design, and remediation activities necessary to complete the ROD required remedy and inspecting the Site to ensure that any SMP for the conditions on such Site is being implemented satisfactorily, that the engineering and/or institutional controls are continually maintained in the manner the Department may require, that no person has engaged or is engaging in any activity that is not consistent with restrictions placed upon the use of the Site or that will or that reasonably is anticipated to: prevent or interfere significantly with a proposed, ongoing or completed project; or expose the public health or the environment to a significantly increased risk of harm or damage from such Site.

A) The Department shall have the right to periodically inspect the Site to ensure that the use of the Site complies with the terms and conditions of this NYWII ERP Agreement; such right of inspection shall survive termination of this NYWII ERP Agreement.

B) If the Department determines that the Municipality has failed to comply with the terms of the NYWII ERP Agreement, the Department may carry out any measures necessary to return the Site to a condition sufficiently protective of human health, in accordance with ECL § 56-0509.4; and neither the Municipality nor any of successors in title, lessees or lenders shall interfere with such access. The Municipality or successor and assign shall pay all costs incurred by the State and any release and indemnification shall be revoked.

V) Payment of State Costs

A) The Municipality hereby agrees to pay the Department for the Municipality's share of the Project. The Municipality's share is ten percent (10%) of the Project cost for design and construction of the remedy. Construction costs are estimated at \$968,000 based on the Capital Cost provided in the ROD dated 03/26/2014. The actual Project costs may vary.

- B) The Department will invoice the Municipality periodically. Within ninety (90) days after receipt of an invoice from the Department, the Municipality shall reimburse the Department for the Project costs incurred by the Department at a rate of ten percent (10%) of the Project costs.
- C) Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)ii. The Department shall not be required to provide any other documentation of costs, provided, however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.
- D) Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7012
- E) The provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply to any objections by the Municipality to any invoiced costs under this NYWII ERP Agreement. Objections shall be sent to the Department as provided under subparagraph V.D.
- F) In the event of non-payment of any invoice within the ninety (90) days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with the Laws of 2013 and ECL § 71-4003. If such failure to pay is after the issuance of the Certificate of Completion (COC), enforcement shall include revocation of the COC and loss of any liability protection.

VI) Disposition of Site

- A) In the event that there is a Disposition of the Site or any portion of such Site, the Municipality is required to reimburse the State the amount owed. The amount owed shall consist of the "value of the Disposition of the Site" less the Municipal costs allowed to offset such value. The maximum amount of money owed the State is defined as an amount of money, not to exceed the State's costs incurred for the investigation and remediation of this Site under this NYWII ERP Agreement and any prior ERP State Assistance Contract (SAC) or Agreement for this Site. The Municipality's allowed costs consist of taxes owed to the Municipality upon acquisition and the Municipality's share of the Project costs (related to the disposed property) provided under this NYWII ERP Agreement as well as any costs allowed under the prior ERP SAC or Agreement for this Site.

For purposes of this subparagraph, the "value of the Disposition of the Site", or that portion of the Site that is disposed, consists, if the Site is disposed by transfer of title, of

the higher of the Site's sale price or the Site's fair market value at time of sale; or, if the Site is disposed by lease, the higher of the present worth of the stream of rent over a 30 year period beginning the effective date of this NYWII ERP Agreement or the present worth of the fair market value of the stream of rent over the same 30 year period.

However, if the Site is located in an economic development zone or in a zone equivalent area, as those terms are defined in Sections 957 and 959(bb), respectively, of the General Municipal Law; or if the Site is located in a project area that is the subject of a redevelopment plan approved by Municipality's legislative body under Article 18-B of the General Municipal Law; or if the Site will be used to maintain or expand the supply of housing for persons of low income and families of low income as Section 2 of the Private Housing Finance Law defines them, then if the Site is disposed by sale, the "value of the Disposition of the Site", or that portion of the Site that is disposed, consists of the Site's sale price, and if the Site is disposed by lease, the present worth of the stream of rent over a 30 year period beginning the effective date of this NYWII ERP Agreement.

- B) If the Municipality disposes of the Site by sale to a responsible party, the disposition must be at fair market value. Additionally, the Municipality shall collect from such responsible party, in addition to such other consideration, an amount of money constituting the amount of Project costs incurred by the State under this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site plus accrued interest and transaction costs. The Municipality shall pay such funds immediately to the Department for deposit into an appropriate account.

VII) Cost Recovery

- A) The State hereby reserves the right to seek to recover the full amount of any Project Costs incurred by the State under this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site through litigation brought under Article 56 of the ECL or other statute or under the common law, or through cooperative agreements, with responsible parties, other than the following:
 - 1) The Municipality; and
 - 2) any successor in title to the Site, any lessee of the Site, and any person that provides financing to the Municipality, such successor in title, or such lessee relative to the remediation, restoration, or redevelopment of the Site, that did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any hazardous substance located at the Site and did not own the Site before the Municipality acquired title to the Site.
- B) The Municipality shall assist the Department and/or the State in compelling responsible parties to bear the cost of the Project by providing upon request by the Department all information that exists as of the start of the term of this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site that identifies the Site's responsible parties and all other information acquired during the course of the Project's implementation.

- C) Upon approval by the Department, the Municipality may make efforts to recover costs from responsible parties. The Municipality hereby agrees to provide the Department with timely advance written notice of any negotiations, proposed agreements, proposed settlements or legal action by which recovery is sought. The Municipality further agrees not to commence such legal action nor enter into any such proposed agreement or settlement without the approval of the Department.
- D) If any responsible party payments and/or other responsible party consideration become available to the Municipality during or after the completion of an environmental restoration project, the Municipality shall immediately notify the Department of such availability. The State is entitled to its share of the amount recovered from the responsible party under this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site. If the Municipality shall fail to make such payment to the State within sixty (60) days of receipt of any responsible party payment (or within ninety (90) days of signing this NYWII ERP Agreement, if the payment was received before the NYWII ERP Agreement was signed), the Department may take measures provided for by law.

If any responsible party payments are received prior to entering into this Agreement, the Municipality must pay the State ninety (90) percent of such payments, unless such payments were received for remedial activities conducted under any prior ERP SAC or Agreement for this Site.

The Municipality agrees that it will immediately notify the Department in writing of its receipt of funds from other sources for any of the Municipality's expenditures incurred pursuant to this NYWII ERP Agreement. Any such funds shall first be applied to the Municipality project share. Any additional funds shall then be applied to the State's share of the project costs.

VIII) Liability Protection

As set forth at ECL § 56-0509, the Municipality and applicable successors and assigns shall be entitled to certain liability protections, subject to the terms and conditions stated therein, upon the issuance of a COC for the Site by the Department. However, if the Municipality or its successor or assigns fails to comply with the EE and/or the SMP for the Site after the issuance of the COC, the Department reserves its right to revoke the COC and rescind any release of liability granted to the Municipality pursuant to ECL Article 56.

IX) Indemnification

The Municipality shall indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments, of every nature and, description brought or recovered against it by reason of any acts or omissions of the Municipality, its agents, employees, or contractors related to this Site.

X) Change of Use

The Municipality shall notify the Department at least sixty (60) days in advance of any change of use as defined in ECL § 56-0511, which is proposed for the Site. In the event that the proposed change of use is inconsistent with the remedial program, the Department shall notify the Municipality of such determination within forty-five (45) days of receipt of such notice. In such event, the Municipality shall not implement the proposed change of use.

XI) Environmental Easement

A) If the Department's issuance of a ROD relies upon one or more institutional and/or engineering controls, the Department shall provide an EE for signature. The authorized representative for the Municipality shall within sixty (60) days of receipt of the EE, sign and submit it to the Department for execution. The Municipality's submittal shall satisfy the statutory and regulatory requirements of law as set forth in ECL Article 71, Title 36 and 6 NYCRR Part 375. The executed EE shall be recorded with the recording officer for the county in which the Site is located.

B) The Municipality or the owner of the Site may petition the Department to modify or extinguish the EE filed pursuant to this NYWII ERP Agreement at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer. The Department will not unreasonably withhold its consent.

C) Engineering and Institutional Controls

1) In the event that engineering and/or institutional controls are components of the remedy selected in the Department's ROD pertaining to the Site, the Department will cause the development of a plan to ensure that such controls are continually maintained in the manner satisfactory to the Department. The Municipality and its successors in title, lessees and lenders are prohibited from challenging the imposition or continuance of such controls, and failure to implement or comply with the Department-approved plan or to maintain such controls constitute a violation of this NYWII ERP Agreement and for the duration of such failure, the release and indemnification granted pursuant to ECL § 56-0509.1 shall have no force and effect.

2) The municipality's or successors' in title, lessees' and lenders' failure to cure such violation of engineering or institutional controls in the time period set by the Department will result in the Department seeking recovery of any funds expended on the Site and permanent revocation of any release and indemnification.

XII) Site Lease/Transfer Conditions

The Municipality shall not enter into any lease or transfer title to, the Site or any portion of it until the Municipality binds itself and its lessees and its successors in title, to the following conditions:

- A) The Site will not be used for the use set forth in Paragraph II or any less restrictive use until it is remediated. The Site may continue to be used for the purpose for which it is being used as of the start of the term of this NYWII ERP Agreement if the Department or DOH has not found that the existing state of contamination is such as to prohibit such use from continuing, giving due regard for public health and environmental protection; and
- B) If, before an EE for the Site is executed and recorded, the Municipality wishes to subdivide the Site into separate parcels, it may do so after submitting a change of use notice pursuant to 375-1.11(d).
- C) If a Municipality wishes to sell all or part of a Site before it is remediated, the Municipality's successor in title must first agree to remediate all such parcels under Department oversight in accordance with the Department's ROD and any such parcel cannot be used for the use set forth in Paragraph II or any less restrictive use until it is remediated. The Site may continue to be used for the purpose for which it is being used as of the start of the term of this NYWII ERP Agreement if the Department or DOH has not found that the existing state of contamination is such as to prohibit such use from continuing, giving due regard for public health and environmental protection.

XIII) Communications

A) All written communications required by this NYWII ERP Agreement shall be transmitted by electronic mail unless otherwise specified by the DER project manager.

1) Communication from the Municipality shall be sent to:

(i) Michael Cruden, P.E., Director
Remedial Bureau E
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233
Phone: (518) 402-9814
Email: michael.cruden@dec.ny.gov

(ii) Krista Anders
Bureau of Environmental Exposure Investigation
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1787
Albany, New York 12237

Email: krista.anders@health.ny.gov

(iii) Andrew Guglielmi, Esq.
NYSDEC Office of General Counsel
625 Broadway
14th Floor
Albany, New York 12233-1500
Phone: (518) 402-9185
Email: andrew.guglielmi@dec.ny.gov

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

Brendan Mehaffy, Executive Director, Office of Strategic Planning
City of Buffalo
920 City Hall, 65 Niagara Square
Buffalo, New York 14202
Phone: 716-851-5059
Email: bmehaffy@city-buffalo.com

- B) The Department and the Municipality reserve the right to designate additional or different addressees for communication on written notice to the other.
- C) Each party shall notify the other within ninety (90) days after any change in the addresses listed in this Paragraph.

XIV) Completion or Termination of NYWII ERP Agreement

- A) If the Municipality complies with the requirements of applicable State and federal laws and regulations and with the terms of this NYWII ERP Agreement, the Department shall issue a COC. This NYWII ERP Agreement shall end when the Department issues the COC.
- B) The Department may terminate this NYWII ERP Agreement without prejudice or waiver of any other rights the State has if the Municipality fails to comply with any of the requirements of applicable State or federal laws and regulations or with any of the requirements of this NYWII ERP Agreement. The Department shall provide written notification to the Municipality of its breach of contract, setting forth in writing the basis for termination of the NYWII ERP Agreement and allowing the Municipality a reasonable and specific amount of time within which to cure its breach. If the Municipality does not cure its breach of contract within the period of time allowed by the Department, this NYWII ERP Agreement shall terminate on the date set forth in the letter ("Termination Letter"). The Department shall notify the Municipality of the amount of money that the Municipality owes the State for repayment of State costs incurred for the Project, including the Department's oversight costs and for any other costs incurred by the State in administering and terminating the Municipality's environmental restoration remediation project ("Demand Letter"). The Municipality agrees that if this NYWII ERP Agreement is terminated by the Department under this Subparagraph B:

- 1) the Municipality, a successor in title, lessee and lender are not entitled to claim any liability limitation benefits provided under ECL § 56-0509 because the Municipality has failed to satisfy the requirement of ECL § 56-0509 (1)(a)(I) to comply with all of the terms and conditions of the NYWII ERP Agreement; and
- 2) the Municipality shall pay to the Department an amount of money constituting the amount of Project costs incurred by the State under this NYWII ERP Agreement plus accrued interest and transaction costs, with interest thereon as provided by law, within 45 days of the Municipality's receipt of the Department's Demand Letter.

C) The Municipality may terminate this NYWII ERP Agreement without prejudice or waiver of any other rights within thirty (30) days of receiving notice of the completion of the Remedial Design if the associated engineer's estimate of project costs exceeds the costs as set forth in Paragraph V.A by at least three times. The requirement for the Municipality to pay ten percent (10%) of the Project cost committed up to the date of termination survives the termination.

XV) If this NYWII ERP Agreement is completed or terminated, the following requirements shall survive such completion or termination: Paragraphs VI (Disposition of Site), VII (Cost Recovery), and XII (Site Lease/Transfer Conditions).

If this NYWII ERP Agreement is terminated, the following requirements shall survive such termination: Paragraphs II (Allowable Use), IV (Entry upon Site), V (Payment of State Costs), X (Change of Use), XI (Environmental Easement), and XIII (Communications).

XVI) Miscellaneous

- A) The Municipality shall file all appropriate forms for registration and closure for all known or identified petroleum bulk storage tanks on the Site, and/or all known or identified chemical bulk storage tanks on the Site to allow proper registration and/or closure of all such tanks.
- B) The Department is exempt from the requirement to obtain any State or local permit or other authorization for any activity conducted pursuant to 6 NYCRR Part 375.
- C) The Municipality shall cooperate with the Department to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform the obligations under this NYWII ERP Agreement.
- D) The Municipality shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this NYWII ERP Agreement.
- E) The paragraph headings set forth in this NYWII ERP Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this NYWII ERP Agreement.

- F) The terms of this NYWII ERP Agreement shall constitute the complete and entire agreement between the Department and Municipality concerning the implementation of the activities required by this NYWII ERP Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this NYWII ERP Agreement shall be binding unless made in writing and subscribed by both parties. In the event of a conflict between the terms of this NYWII ERP Agreement and any Work Plan submitted pursuant to this NYWII ERP Agreement, the terms of this NYWII ERP Agreement shall control over the terms of the Work Plan(s). The Municipality consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this NYWII ERP Agreement and further agrees not to contest the validity of this NYWII ERP Agreement or its terms.
- G) Unless otherwise expressly provided herein, terms used in this NYWII ERP Agreement which are defined in ECL Article 56 or in 6 NYCRR Part 375 shall have the meaning assigned to them under said statute or regulations.
- H) The Municipality's obligation under this NYWII ERP Agreement represents payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty. This NYWII ERP Agreement does not constitute a permit and does not confer upon the Municipality the right to engage in the Contemplated Use or any other use of the Site for any particular purpose.
- I) No delay or omission on the part of either party in exercising any right under this NYWII ERP Agreement shall operate as a waiver of such right or of any other right under this NYWII ERP Agreement. A waiver shall not be construed as a bar to any right and/or remedy. No waiver or consent shall be binding unless it is in writing and executed by the Department and the Municipality.
- J) This NYWII ERP Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.
- K) The effective date of this NYWII ERP Agreement is the date it is signed by the Commissioner or the Commissioner's designee after all other parties have signed.
- L) The Municipality acknowledges that it has read, understands, and agrees to abide by all the terms set forth in this NYWII ERP Agreement.
- M) In accordance with Section 41 of the State Finance Law, the State shall have no liability under this NYWII ERP Agreement beyond funds available for this NYWII ERP Agreement.

N) Notwithstanding any provision to the contrary, the Department expressly reserves its rights to postpone, suspend, abandon or terminate this NYWII ERP Agreement, and such actions shall in no event be deemed a breach of this NYWII ERP Agreement.

DATED:

JAN 27 2015

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



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

CONSENT BY MUNICIPALITY

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

Municipality's Name:

By: B McEliff
Printed Name: Brendan McEliff
Title: Executive Director
Date: 1/23/15

STATE OF NEW YORK

COUNTY OF erie

On the 23 day of January in the year 2015, before me, the undersigned, personally appeared Brendan McEliff (full name) personally known to me who, being duly sworn, did depose and say that he/she resides at office located at 920 city Hall Bldg (full mailing address) and that he/she is the executive director of the city of Buffalo Office of Strategic Planning (full legal name of municipality), the municipality described in and which executed the above instrument; and that he/she signed his/her name thereto as authorized by said municipality.

Notary Public, State of New York

SC

SCOTT C. BILLMAN
ATTORNEY AT LAW
QUALIFIED IN ERIE COUNTY
My Commission Expires 5/2/15

APPROVED
AS TO FORM ONLY

Asst
Corporation Counsel
By [Signature] 1-21-15

Notwithstanding any provision to the contrary, the Department expressly reserves its right to prepare, amend, alter or terminate this RFP/RFQ Agreement, and such action shall in no event be deemed a breach of this RFP/RFQ Agreement.

Exhibit A
Record of Decision

02/10/10

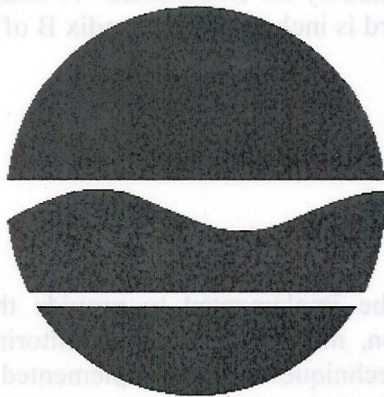
JOSEPH J. MARTELL
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Robert W. Sebick, P.E., Director
Division of Environmental Restoration

DECLARATION OF RECORD OF DECISION

1318 Niagara Street
Environmental Restoration Project
Buffalo, Erie County
Site No. E915213
March 2014



Prepared by
Division of Environmental Remediation
New York State Department of Environmental Conservation

DECLARATION STATEMENT - RECORD OF DECISION

1318 Niagara Street
Environmental Restoration Project
Buffalo, Erie County
Site No. E915213
March 2014

Statement of Purpose and Basis

This document presents the remedy for the 1318 Niagara Street site, an environmental restoration site. The remedial program was chosen in accordance with the New York State Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 375.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (the Department) for the 1318 Niagara Street site and the public's input to the proposed remedy presented by the Department. A listing of the documents included as a part of the Administrative Record is included in Appendix B of the ROD.

Description of Selected Remedy

The elements of the selected remedy are as follows:

1. Remedial Design

A remedial design program will be implemented to provide the details necessary for the construction, operation, optimization, maintenance, and monitoring of the remedial program. Green remediation principles and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows;

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gases and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which would otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals; and
- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development.

2. Excavation

Excavation and off-site disposal of approximately 2,562 cubic yards of soil exceeding 10 ppm PCBs

Clean fill meeting the requirements of 6 NYCRR Part 375-6.7(d) will be brought in to replace the excavated soil or complete the backfilling of the excavation and establish the designed grades at the site. The site will be re-graded to accommodate installation of a cover system as described in Paragraph 3 below. Soil derived from the re-grading meeting commercial SCOs may be used to backfill the excavation.

3. Cover System

A site cover will be required to allow for commercial use of the site. The cover will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper one foot of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required, it will be a minimum of one foot of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for commercial use. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d).

4. Institutional Control

Imposition of an institutional control in the form of an environmental easement for the controlled property that:

- requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3);
- allows the use and development of the controlled property for commercial and industrial use as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH;
- requires compliance with the Department approved Site Management Plan.

5. Site Management Plan

A Site Management Plan is required, which includes the following:

- a. an Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and engineering controls remain in place and effective:

Institutional Control: The Environmental Easement as discussed in paragraph 4 above.

Engineering Control: A minimum of one foot of cover soil as discussed in paragraph 3 above.

The Site Management Plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- descriptions of the provisions of the environmental easement including any land use, and groundwater use restrictions;
- provision for evaluation of the potential for soil vapor intrusion for any buildings developed on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion
- provisions for the management and inspection of the identified engineering controls;
- maintaining site access controls and Department notification; and
- the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

b. a Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:

- monitoring for vapor intrusion for any buildings developed on the site, as may be required by the Institutional and Engineering Control Plan discussed above; and
- post-remedial groundwater monitoring.

New York State Department of Health Acceptance

The New York State Department of Health (NYSDOH) concurs that the remedy for this site is protective of human health.

Declaration

The selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action to the extent practicable, and is cost effective. This remedy utilizes permanent solutions and alternative treatment or resource recovery technologies, to the maximum extent practicable, and satisfies the preference for remedies that reduce toxicity, mobility, or volume as a principal element.

March 26, 2014

Date



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

RECORD OF DECISION

1318 Niagara Street
Buffalo, Erie County
Site No. E915213
March 2014

SECTION 1: SUMMARY AND PURPOSE

The New York State Department of Environmental Conservation (the Department), in consultation with the New York State Department of Health (NYSDOH), has selected a remedy for the above referenced site. The disposal of contaminants at the site has resulted in threats to public health and the environment that would be addressed by the remedy. The disposal or release of contaminants at this site, as more fully described in this document, has contaminated various environmental media. Contaminants include hazardous waste and/or petroleum. The remedy is intended to attain the remedial action objectives identified for this site for the protection of public health and the environment. This Record of Decision (ROD) identifies the selected remedy, summarizes the other alternatives considered, and discusses the reasons for selecting the remedy.

The 1996 Clean Water/ Clean Air Bond Act provides funding to municipalities for the investigation and cleanup of brownfields. Brownfields are abandoned, idled, or under-used properties where redevelopment is complicated by real or perceived environmental contamination. They typically are former industrial or commercial properties where operations may have resulted in environmental contamination. Brownfields often pose not only environmental, but legal and financial burdens on communities. Under the Environmental Restoration Program, the state provides grants to municipalities to reimburse up to 90 percent of eligible costs for site investigation and remediation activities. Once remediated, the property can then be reused.

The Department has issued this document in accordance with the requirements of New York State Environmental Conservation Law and 6 NYCRR Part 375. This document is a summary of the information that can be found in the site-related reports and documents.

SECTION 2: CITIZEN PARTICIPATION

The Department seeks input from the community on all remedies. A public comment period was held, during which the public was encouraged to submit comment on the proposed remedy. All comments on the remedy received during the comment period were considered by the Department in selecting a remedy for the site. Site-related reports and documents were made available for review by the public at the following document repository:

A public meeting was also conducted. At the meeting, the findings of the remedial investigation (RI) and the alternatives analyses (AA) were presented along with a summary of the proposed remedy. After the presentation, a question-and-answer period was held, during which verbal or written comments were accepted on the proposed remedy.

Comments on the remedy received during the comment period are summarized and addressed in the responsiveness summary section of the ROD.

Receive Site Citizen Participation Information By Email

Please note that the Department's Division of Environmental Remediation (DER) is "going paperless" relative to citizen participation information. The ultimate goal is to distribute citizen participation information about contaminated sites electronically by way of county email listservs. Information will be distributed for all sites that are being investigated and cleaned up in a particular county under the State Superfund Program, Environmental Restoration Program, Brownfield Cleanup Program, Voluntary Cleanup Program, and Resource Conservation and Recovery Act Program. We encourage the public to sign up for one or more county listservs at <http://www.dec.ny.gov/chemical/61092.html>

SECTION 3: SITE DESCRIPTION AND HISTORY

Location: The 1318 Niagara Street Site is located in an urban area in the City of Buffalo, Erie County. The site is across from the intersection of Niagara Street and Lafayette Avenue.

Site Features: The site is a vacant lot that slopes to the west, and is covered with 2-3 inches of crushed stone. The site is bordered to the west by Penn Central Railroad and beyond that by NYS I-90 and the Black Rock Canal.

Current Zoning and Land Use: The site is currently inactive, and is zoned for commercial use. The surrounding parcels are a rail corridor to the west, and mixed commercial/residential properties along Niagara Street to the north, south, and east. The nearest residential area is 150 feet east of the site.

Past Use of the Site: From 1909 to 1987 the site was used as a brewery, and from 1987 to 2004 utilized by private owners for unknown purposes.

Prior uses that appear to have led to site contamination include two 20,000 gallon underground storage tanks (USTs), a furnace pit, and storage of 55 gallon drums containing PCBs and waste oil. In 2004 the City of Buffalo obtained the property through tax foreclosure. Demolition of the site buildings began in May of 2006. Residual oil in the USTs was removed using a vacuum truck and the USTs were excavated in February 2007. The tanks were staged and subsequently removed from the site in 2010. Upon UST excavation, it was found that one of the USTs had leaked into the subsurface, impacting the surrounding soil. As a result of the UST leak, the New York State Department of Environmental Conservation assigned Spill Number 0651726 to the site. Underground piping associated with the USTs was also discovered and removed prior to 2009. A former furnace was discovered in January 2007. The furnace contained PCB sludge

(23,700 mg/kg) and TCLP organics/metals. The furnace and sludge were subsequently removed.

Site Geology and Hydrogeology: The site is overlain by 8-10 feet of fill underlain by 8-12 feet of silty clay to limestone bedrock. Shallow groundwater is at 20-25 feet, and generally flows to the west southwest.

A site location map is attached as Figure 1.

SECTION 4: LAND USE AND PHYSICAL SETTING

The Department may consider the current, intended, and reasonably anticipated future land use of the site and its surroundings when evaluating a remedy for soil remediation. For this site, alternatives (or an alternative) that restrict(s) the use of the site to commercial use (which allows for industrial use) as described in Part 375-1.8(g) were/was evaluated in addition to an alternative which would allow for unrestricted use of the site.

A comparison of the results of the RI to the appropriate standards, criteria and guidance values (SCGs) for the identified land use and the unrestricted use SCGs for the site contaminants is included in the Tables for the media being evaluated in Exhibit A.

SECTION 5: ENFORCEMENT STATUS

Potentially Responsible Parties (PRPs) are those who may be legally liable for contamination at a site. This may include past or present owners and operators, waste generators, and haulers.

No PRPs have been documented to date.

Since no viable PRPs have been identified, there are currently no ongoing enforcement actions. However, legal action may be initiated at a future date by the state to recover state response costs should PRPs be identified. City of Buffalo, Office of Strategic Planning and City of Buffalo will assist the state in its efforts by providing all information to the state which identifies PRPs. City of Buffalo, Office of Strategic Planning and City of Buffalo will also not enter into any agreement regarding response costs without the approval of the Department.

SECTION 6: SITE CONTAMINATION

6.1: Summary of the Remedial Investigation

A Remedial Investigation (RI) has been conducted. The purpose of the RI was to define the nature and extent of any contamination resulting from previous activities at the site. The field activities and findings of the investigation are described in the RI Report.

The following general activities are conducted during an RI:

- Research of historical information,

- Geophysical survey to determine the lateral extent of wastes,
- Test pits, soil borings, and monitoring well installations,
- Sampling of waste, surface and subsurface soils, groundwater, and soil vapor,
- Sampling of surface water and sediment,
- Ecological and Human Health Exposure Assessments.

The analytical data collected on this site includes data for:

- groundwater
- soil

6.1.1: Standards, Criteria, and Guidance (SCGs)

The remedy must conform to promulgated standards and criteria that are directly applicable or that are relevant and appropriate. The selection of a remedy must also take into consideration guidance, as appropriate. Standards, Criteria and Guidance are hereafter called SCGs.

To determine whether the contaminants identified in various media are present at levels of concern, the data from the RI were compared to media-specific SCGs. The Department has developed SCGs for groundwater, surface water, sediments, and soil. The NYSDOH has developed SCGs for drinking water and soil vapor intrusion. The tables found in Exhibit A list the applicable SCGs in the footnotes. For a full listing of all SCGs see: <http://www.dec.ny.gov/regulations/61794.html>

6.1.2: RI Results

The data have identified contaminants of concern. A "contaminant of concern" is a contaminant that is sufficiently present in frequency and concentration in the environment to require evaluation for remedial action. Not all contaminants identified on the property are contaminants of concern. The nature and extent of contamination and environmental media requiring action are summarized in Exhibit A. Additionally, the RI Report contains a full discussion of the data. The contaminant(s) of concern identified at this site is/are:

PCB-AROCLOR 1260
 DICHLOROETHYLENE
 ACETONE
 BENZENE
 XYLENE (MIXED)
 CHROMIUM

LEAD
 1,2,4-TRICHLOROBENZENE
 TRICHLOROETHENE (TCE)
 VINYL CHLORIDE
 1,2-DICHLOROETHANE
 indeno(1,2,3-cd)pyrene

As illustrated in Exhibit A, the contaminants of concern exceed the applicable SCGs for:

- groundwater
- soil

6.2: Interim Remedial Measures

An interim remedial measure (IRM) is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before issuance of the Record of Decision.

The following IRMs have been completed at this site based on conditions observed during the RI.

IRM - Removal of PCB Waste and Soil

Two IRMs were conducted at the site between 2010 and 2013. The objectives of IRM-1 (Figure 4) was to clean and dispose of highly contaminated polychlorinated biphenyl (PCB) wastes including the former USTs and contents, 55 gallon drums and contents, and PCB-contaminated soil from the UST and furnace pit excavations. Excavation endpoint sampling was conducted in conjunction with IRM-1 as part of the Site Investigation phase of the project.

IRM-2 (Figure 5) included limited excavations of five discrete areas identified as A-E, where PCB concentrations were identified exceeding 10 ppm. Confirmatory sampling conducted after IRM-2 found areas of remaining contamination (Areas A-D), including PCB contaminated fill material, above 10 ppm located over the western portion of the site. Data also indicates that PCB contaminated soil greater than 1 ppm remains over a majority of the site (Figure 6).

6.3: Summary of Environmental Assessment

This section summarizes the assessment of existing and potential future environmental impacts presented by the site. Environmental impacts may include existing and potential future exposure pathways to fish and wildlife receptors, wetlands, groundwater resources, and surface water.

Based upon the resources and pathways identified and the toxicity of the contaminants of ecological concern at this site, a Fish and Wildlife Resources Impact Analysis (FWRIA) was deemed not necessary for OU 01.

Nature and Extent of Contamination

On-site Areas:

Based upon investigations conducted to date, the primary contaminant of concern is polychlorinated biphenyls (PCBs) in soil. The only metals in soil exceeding commercial SCOs are copper (8,770 ppm) and zinc (70,000 ppm) at MW-03, 18-20 feet below ground surface. The SVOC indeno(1,2,3-cd)pyrene was noted in two samples (530 and 600 ppb), slightly exceeding the unrestricted SCO of 500 ppb. No VOCs exceeded restricted residential in soil. On-site groundwater also indicated the presence of PCBs at trace levels, in addition to VOCs and metals.

Soil - In general, soil contamination is limited to PCBs in fill but extends to native clay at depths of 12 feet below ground surface (fbgs) or greater in the former UST and furnace pit areas.

Based on soil excavation confirmatory sample results from IRM-2, PCB-contaminated fill material remains site wide from 1 ppm to 530 ppm. The known areas of elevated PCB soil contamination (300 ppm and 530 ppm) are located along the south and east walls of IRM-2 Excavation Area C, and the south wall of Excavation Area B (150 ppm).

Groundwater - Groundwater contamination slightly exceeding groundwater standards was noted in monitoring wells MW-03, MW-04, and MW-05 and consisted of several volatile organic compounds (VOCs) and associated degradation products (e.g., trichloroethylene at 350 ppb). PCB impacts to groundwater were limited to one well, MW-03, with total PCBs at 1.3 ug/l and 8.7 ug/l respectively, exceeding the AWQSGVs standard of 0.09 ug/l.

Off-Site Areas:

Soil - Contamination was found off-site at Excavation Area E, located in the sidewalk along Niagara Street adjacent to the northeastern portion of the site. This area was addressed by the IRM and no exceedences of the PCB SCO (1 ppm) were evident in the sidewall and bottom endpoint samples. The final excavation was approximately 295 sq. ft. The excavation was backfilled with crushed stone and the sidewalk repaired.

Groundwater - There is no evidence of site-related contaminated groundwater migrating off-site.

6.4: Summary of Human Exposure Pathways

This human exposure assessment identifies ways in which people may be exposed to site-related contaminants. Chemicals can enter the body through three major pathways (breathing, touching or swallowing). This is referred to as *exposure*.

The site is completely fenced, which restricts public access. However, persons who enter the site could contact contaminants in the soil by digging beneath the crushed stone or otherwise disturbing the soil below. People are not drinking the contaminated groundwater because the area is served by a public water supply that is not contaminated by the site. Volatile organic compounds in the groundwater may move into the soil vapor (air spaces within the soil), which in turn may move into overlying buildings and affect the indoor air quality. This process, which is similar to the movement of radon gas from the subsurface into the indoor air of buildings, is referred to as soil vapor intrusion. Because there is no on-site building, inhalation of site contaminants in indoor air due to soil vapor intrusion does not represent a concern for the site in its current condition. However, the potential exists for the inhalation of site contaminants due to soil vapor intrusion for any future on-site development. Environmental sampling indicates soil vapor intrusion is not a concern for off-site buildings.

6.5: Summary of the Remediation Objectives

The objectives for the remedial program have been established through the remedy selection process stated in 6 NYCRR Part 375. The goal for the remedial program is to restore the site to

pre-disposal conditions to the extent feasible. At a minimum, the remedy shall eliminate or mitigate all significant threats to public health and the environment presented by the contamination identified at the site through the proper application of scientific and engineering principles.

The remedial action objectives for this site are:

Groundwater

RAOs for Public Health Protection

- Prevent ingestion of groundwater with contaminant levels exceeding drinking water standards.

Soil

RAOs for Public Health Protection

- Prevent ingestion/direct contact with contaminated soil.

RAOs for Environmental Protection

- Prevent migration of contaminants that would result in groundwater or surface water contamination.

Soil Vapor

RAOs for Public Health Protection

- Mitigate impacts to public health resulting from existing, or the potential for, soil vapor intrusion into buildings at a site.

SECTION 7: SUMMARY OF THE SELECTED REMEDY

To be selected the remedy must be protective of human health and the environment, be cost-effective, comply with other statutory requirements, and utilize permanent solutions, alternative technologies or resource recovery technologies to the maximum extent practicable. The remedy must also attain the remedial action objectives identified for the site, which are presented in Section 6.5. Potential remedial alternatives for the Site were identified, screened and evaluated in the alternatives analysis (AA) report.

A summary of the remedial alternatives that were considered for this site is presented in Exhibit B. Cost information is presented in the form of present worth, which represents the amount of money invested in the current year that would be sufficient to cover all present and future costs associated with the alternative. This enables the costs of remedial alternatives to be compared on a common basis. As a convention, a time frame of 30 years is used to evaluate present worth costs for alternatives with an indefinite duration. This does not imply that operation, maintenance, or monitoring would cease after 30 years if remediation goals are not achieved. A summary of the Remedial Alternatives Costs is included as Exhibit C.

The basis for the Department's remedy is set forth at Exhibit D.

The selected remedy is referred to as the Excavation/Disposal of Contaminated Soils remedy.

The estimated present worth cost to implement the remedy is \$1,010,000. The cost to construct the remedy is estimated to be \$968,000 and the estimated average annual cost is \$9,300.

The elements of the selected remedy are as follows:

1. Remedial Design

A remedial design program will be implemented to provide the details necessary for the construction, operation, optimization, maintenance, and monitoring of the remedial program. Green remediation principles and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows;

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gases and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which would otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals; and
- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development.

2. Excavation

Excavation and off-site disposal of approximately 2,562 cubic yards of soil exceeding 10 ppm PCBs

Clean fill meeting the requirements of 6 NYCRR Part 375-6.7(d) will be brought in to replace the excavated soil or complete the backfilling of the excavation and establish the designed grades at the site. The site will be re-graded to accommodate installation of a cover system as described in Paragraph 3 below. Soil derived from the re-grading meeting commercial SCOs may be used to backfill the excavation.

3. Cover System

A site cover will be required to allow for commercial use of the site. The cover will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper one foot of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required, it will be a minimum of one foot of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for commercial use. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to

the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d).

4. Institutional Control

Imposition of an institutional control in the form of an environmental easement for the controlled property that:

- requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3);
- allows the use and development of the controlled property for commercial and industrial use as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
- restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH;
- requires compliance with the Department approved Site Management Plan.

5. Site Management Plan

A Site Management Plan is required, which includes the following:

a. an Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and engineering controls remain in place and effective:

Institutional Control: The Environmental Easement as discussed in paragraph 4 above.

Engineering Control: A minimum of one foot of cover soil as discussed in paragraph 3 above.

The Site Management Plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- descriptions of the provisions of the environmental easement including any land use, and groundwater use restrictions;
- provision for evaluation of the potential for soil vapor intrusion for any buildings developed on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion
- provisions for the management and inspection of the identified engineering controls;
- maintaining site access controls and Department notification; and
- the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls.

b. a Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:

- monitoring for vapor intrusion for any buildings developed on the site, as may be required by the Institutional and Engineering Control Plan discussed above; and
- post-remedial groundwater monitoring.

Exhibit A

Nature and Extent of Contamination

This section describes the findings of the Remedial Investigation for all environmental media that were evaluated. As described in Section 6.1, samples were collected from various environmental media to characterize the nature and extent of contamination.

For each medium for which contamination was identified, a table summarizes the findings of the investigation. The tables present the range of contamination found at the site in the media and compares the data with the applicable SCGs for the site. The contaminants are arranged into three categories: volatile and semi-volatile organic compounds (VOCs/SVOC), in-organics (metals), and pesticides / polychlorinated biphenyls (PCBs). For comparison purposes, the SCGs are provided for each medium that allows for unrestricted use. For soil, if applicable, the Restricted Use SCGs identified in Section 4 and Section 6.1.1 is also presented.

Waste/Source Areas

As described in the RI report, waste/source materials were identified at the site and are impacting soil.

Wastes are defined in 6 NYCRR Part 375-1.2(aw) and include solid, industrial and/or hazardous wastes. Source areas are defined in 6 NYCRR Part 375(au). Source areas are areas of concern at a site where substantial quantities of contaminants are found which can migrate and release significant levels of contaminants to another environmental medium. Remaining PCB waste and source areas identified at the site post IRM-1 and IRM-2 are generally found site-wide, and include:

- PCB contaminated shallow soil samples collected entirely or partially within the top 1 foot of ground surface range from >1 up to 7.3 ppm.
- PCB contaminated fill materials extending to native clay soil (Figure 5), typically encountered between six and eight feet below ground surface (fbgs), but ranges from as little as 4 fbgs to as much as 15 fbgs. The areas exceeding PCB Industrial SCOs of 25 ppm and hazardous waste concentrations greater than 50 ppm are located along the south and east walls of IRM-2 Excavation Area C (300 ppm/530 ppm), north and east wall of Excavation Area A (44 ppm and 28 ppm respectively), and south wall of Excavation Area B (150 ppm).
- Several samples from native clay soil showed PCB concentrations which exceeded the 1 ppm SCO (Figure 12). These exceedences were evident at depths of 12 feet or greater in the UST and furnace pit areas.
- In general, soil contamination is limited to PCBs with the exception of copper (8,770 ppm) and zinc (70,000 ppm) at MW-03, 18-20 fbgs, in excess of Commercial use SCOs of 270 ppm for copper and the Industrial use SCO of 10,000 ppm for zinc.
- No VOCs exceeded restricted SCOs. The 1,2,4-trichlorobenzene detection at MW-03 soil (16,000 ug/l at 18-20 fbgs) exceeds the CP-51 protection of groundwater standard of 3,400 ug/l. Acetone, benzene, and xylene were the only VOCs exceeding unrestricted SCO.
- The only SVOC exceedance site-wide was indeno(1,2,3-cd)pyrene, noted in two samples (530 and 600 ppb), slightly exceeding the unrestricted SCO of 500 ppb.

Certain waste/source areas identified at the site were partially addressed by the two IRMs described in Section 6.2. The remaining PCB contaminated soil waste/source area(s) identified during the RI will be addressed in the remedy selection process.

Groundwater

Groundwater samples from MW-01 through MW-05 (Figure 5) were analyzed for VOCs using USEPA Method 8260. Several VOC compounds, including 1,2,4-trichlorobenzene, 1,1-dichloroethane, benzene, cis-1,2-dichloroethene, trichloroethene, 1,1-dichloroethane, 1,2-dichloroethane, and vinyl chloride were detected at concentrations slightly above the NYSDEC Ambient Water Quality Standards and Guidance Values (AWQSGV) in monitoring wells MW-03, MW-04, and MW-05. No exceedences of NYSDEC AWQSGV s for VOC were seen in MW-01 and MW-02.

No SVOC concentrations were detected above AWQSGVs (Method 8270) in groundwater samples from MW-02 through MW-05.

Groundwater samples from MW-02 through MW-05 were analyzed for TAL metals using Method 6010/7471. Each sample contained at least one compound (sodium, thallium, antimony, magnesium, iron and manganese) at a level exceeding AWQSGVs.

No pesticide concentrations were detected above AWQSGVs (Method 8081) in the groundwater samples from MW-01 through MW-05.

PCB impacts to groundwater were limited to one well, MW-03, with total PCBs at 1.3 ug/l and 8.7 ug/l respectively, exceeding the AWQSGVs standard of 0.09 ug/l.

Table #1 - Groundwater

Detected Constituents	Concentration Range Detected (ppb) ^a	SCG ^b (ppb)	Frequency Exceeding SCG
VOCs			
1,2,4-Trichlorobenzene	0.88-24.0	5.0	2 of 10
1,1-Dichloroethane	1.3-12.0	5.0	1 of 10
Benzene	1.2-3.4	1.0	2 of 10
cis-1,2-Dichloroethene	1.6-63.0	5.0	3 of 10
Trichloroethene	0.6-350.0	5.0	2 of 10
Vinyl chloride	<1-26.0	2.0	1 of 10
1,2-Dichloroethane	0.78-3.6	0.6	3 of 10
Pesticides/PCBs			
Dieldrin	0.004-0.025	0.004	1 of 10
Heptachlor epoxide	0.024-0.19	0.03	1 of 10
Total PCB's	1.3-8.7	0.09	2 of 10

a - ppb: parts per billion, which is equivalent to micrograms per liter, ug/L, in water.

b - SCG: Standard Criteria or Guidance - Ambient Water Quality Standards and Guidance Values (TOGs 1.1.1), 6 NYCRR Part 703, Surface water and Groundwater Quality Standards, and Part 5 of the New York State Sanitary Code (10 NYCRR Part 5).

The primary groundwater contaminants are several VOC compounds, including 1,2,4-trichlorobenzene, 1,2-dichloroethane, benzene, cis-1,2-dichloroethene, trichloroethene, 1,1-dichloroethane, and vinyl chloride, detected at concentrations above the NYSDEC AWQSGV in monitoring wells MW-03, MW-04, and MW-05. Monitoring wells MW-01 and MW-02 had no exceedences of the NYSDEC AWQSGVs for VOCs.

The 1,2,4-trichlorobenzene detection at MW-03 was also detected in the MW-3 soil sample. The other VOC compounds observed in groundwater (chlorinated solvents TCE and associated breakdown products) were not detected in soil but were noted in the 2009 preliminary site investigation sampling of the UST and 55-gallon drum contents.

The only PCB impact to groundwater at the Site was observed at MW-03 (1.3/8.7 ppb).

Based on the findings of the RI, the past disposal of hazardous waste PCB's has resulted in the contamination of groundwater. The site contaminants that are considered to be the primary contaminants of concern which will drive the remediation of groundwater to be addressed by the remedy selection process are PCB's.

Soil

Surface and subsurface soil samples were collected at the site during the RI. Surface soil samples were collected from a depth of 0-2 inches to assess direct human exposure. Subsurface soil samples were collected from a depth of 2 - 15 feet to assess soil contamination impacts to groundwater.

The results indicate that soils at the site exceed the residential, restricted residential, commercial and industrial SCG for PCBs (Figure 6). Based on the irregular pattern of contaminant distribution, contaminated soil may have been moved around the site during the site demolition work and backfilling operations. The soil contamination appears to be prevalent in fill (Figure 5), with marginal impact to the underlying native soil (Figure 6).

PCB concentrations which exceed the threshold for designation as hazardous waste (i.e., > 50 ppm) remain in fill and soil in the western and southern portions of the site, and nearly all fill (except clean backfill placed in the IRM excavation areas) can be inferred to be contaminated at levels which exceed the commercial use SCO of 1 ppm. Because of the manner in which contamination was distributed in the fill area, significant uncertainty remains concerning the relative amount of hazardous (PCB >50 ppm) vs. non-hazardous (PCB <50ppm) soil.

Table #2 - Soil

Detected Constituents	Concentration Range Detected (ppm) ^a	Unrestricted SCG ^b (ppm)	Frequency Exceeding Unrestricted SCG	Restricted Use SCG ^c (ppm) Commercial	Frequency Exceeding Restricted SCG
VOCs/SVOC					
Acetone	0.013-0.18	0.05	1 of 35	500	0 of 35
Benzene	0.004-0.12	0.06	1 of 35	44	0 of 35
Xylenes, Total	<0.012-3.0	0.26	5 of 35	500	0 of 35
Indeno(1,2,3-cd)pyrene	0.071-0.600	0.5	2 of 19	5.6	0 of 19
Inorganics					
Chromium	3.4-26.2	1	20 of	400	0 of 23
Lead	11.4-255.0	63	5 of 23	1000	0 of 23
PCBs					

Detected Constituents	Concentration Range Detected (ppm) ^a	Unrestricted SCG ^b (ppm)	Frequency Exceeding Unrestricted SCG	Restricted Use SCG ^c (ppm) Commercial	Frequency Exceeding Restricted SCG
PCB-Total	0.12-530	0.1	115 of 198	1.0	69 of 198

a - ppm: parts per million, which is equivalent to milligrams per kilogram, mg/kg, in soil.

b - SCG: Part 375-6.8(a), Unrestricted Soil Cleanup Objectives.

c - SCG: Part 375-6.8(b), Restricted Use Soil Cleanup Objectives for the Protection of Public Health for commercial use, unless otherwise noted.

The primary soil contaminants are PCBs associated with residues from past site operations. Soil contamination identified during the RI was partially addressed during two IRM's described in Section 6.2. The primary soil contamination is distributed across a majority of the site (Figure 6). Based on the irregular pattern of contaminant distribution, contaminated soil may have been moved around the site during the demolition work, excavations related to the former Underground Storage Tanks (USTs), the Former Furnace Pit removals, and backfilling operations.

Based on the findings of the Remedial Investigation, the past disposal of hazardous waste has resulted in the contamination of soil. The site contaminant identified in soil which is considered to be the primary contaminant of concern, to be addressed by the remedy selection process is PCBs.

Constituent	Concentration Range Detected (ppm)	Unrestricted SCG (ppm)	Frequency Exceeding Unrestricted SCG	Restricted Use SCG (ppm) Commercial	Frequency Exceeding Restricted SCG
PCB-Total	0.12-530	0.1	115 of 198	1.0	69 of 198
PCB-1	0.005-0.05	0.005	115 of 198	0.005	69 of 198
PCB-2	0.005-0.05	0.005	115 of 198	0.005	69 of 198
PCB-3	0.005-0.05	0.005	115 of 198	0.005	69 of 198
PCB-4	0.005-0.05	0.005	115 of 198	0.005	69 of 198
PCB-5	0.005-0.05	0.005	115 of 198	0.005	69 of 198
PCB-6	0.005-0.05	0.005	115 of 198	0.005	69 of 198
PCB-7	0.005-0.05	0.005	115 of 198	0.005	69 of 198
PCB-8	0.005-0.05	0.005	115 of 198	0.005	69 of 198
PCB-9	0.005-0.05	0.005	115 of 198	0.005	69 of 198
PCB-10	0.005-0.05	0.005	115 of 198	0.005	69 of 198

Exhibit B

Description of Remedial Alternatives

The following alternatives were considered based on the remedial action objectives (see Section 6.5) to address the contaminated media identified at the site as described in Exhibit A.

Alternative 1: No Further Action with Site Management

The No Further Action with Site Management Alternative recognizes the remediation of the site completed by the IRMs described in Section 6.2 and Site Management and Institutional Controls and Engineering Controls are necessary to confirm the effectiveness of the IRM. This alternative maintains engineering controls which were part of the IRM and includes institutional controls, in the form of an environmental easement and site management plan, necessary to protect public health and the environment from contamination remaining at the site after the IRMs.

Present Worth:\$190,000
Capital Cost:.....\$15,000
Annual Costs:.....\$9,300

Alternative 2: Excavation/Disposal greater than 1 ppm

This alternative achieves all of the SCGs discussed in Section 6.1.1 and Exhibit A and soil meets the unrestricted soil cleanup objectives listed in Part 375-6.8 (a) and includes:

- Excavation and off-site disposal of all soil greater than 1 ppm PCBs. The estimated volume of contaminated soils is 6,312 cubic yards.
- PCB-contaminated soils will be properly disposed under NYSDEC Part 371 the Toxic Substances Control Act (TSCA). A comprehensive pre-design investigation will be conducted to separate highly contaminated (>50 ppm) soil from soil with lower PCB concentrations. For cost estimating, approximately 45 percent of the excavated soil will be assumed to be highly contaminated. Reductions in the amount of hazardous soil disposal may significantly reduce the remedial costs.
- Verification samples would be collected from the excavation bottom and sidewalls. Excavated soil would be subject to waste characterization testing prior to off-site disposal.
- Collection and off-site disposal of water encountered during excavation, decontamination water, and any other water potentially contaminated.
- Site restoration includes backfilling, as necessary, with clean backfill.
- Cover and seed site with topsoil for erosion control.
- Groundwater use restriction, post-remedial groundwater monitoring, and soil vapor intrusion provision,.

Present Worth:\$1,710,000
Capital Cost:.....\$1,670,000
Annual Costs:.....\$9,300

Alternative 3: Excavation/Disposal greater than 10 ppm, Cover System, SMP

This alternative includes:

- Excavation and off-site disposal of all soil greater than 10 ppm PCBs, as identified in Figure 7. The estimated volume of contaminated soils is 2,562 cubic yards.
- PCB-contaminated soils will be properly disposed under NYSDEC Part 371 and the Toxic Substances Control Act (TSCA). A comprehensive pre-design investigation will be conducted to separate highly contaminated (>50 ppm) soil from soil with lower PCB concentrations. For cost estimating, approximately 45 percent of the excavated soil will be assumed to be highly contaminated. Reductions in the amount of hazardous soil disposal may significantly reduce the remedial costs.
- Verification samples would be collected from the excavation bottom and sidewalls. Excavated soil would be subject to waste characterization testing prior to off-site disposal.
- Collection and off-site disposal of water encountered during excavation, decontamination water, and any other water potentially contaminated.
- Site restoration includes backfilling, as necessary, with clean backfill.
- The surface will be covered with a one-foot thick layer of clean fill and topsoil, and then seeded for erosion control.
- Groundwater use restriction, post-remedial groundwater monitoring, and soil vapor intrusion provision.

Present Worth:	\$1,010,000
Capital Cost:.....	\$968,000
Annual Costs:.....	\$9,300

Alternative 4: Excavation and Disposal greater than 25 ppm, Cover System, SMP

This alternative includes:

- Excavation and off-site disposal of all soil greater than 25 ppm PCBs to meet Industrial SCOs. The estimated volume of contaminated soils is 2,437 cubic yards.
- PCB-contaminated soils will be properly disposed under NYSDEC Part 371 the Toxic Substances Control Act (TSCA). A comprehensive pre-design investigation will be conducted to separate highly contaminated (>50 ppm) soil from soil with lower PCB concentrations. For cost estimating, approximately 45 percent of the excavated soil will be assumed to be highly contaminated. Reductions in the amount of hazardous soil disposal may significantly reduce the remedial costs.
- Verification samples would be collected from the excavation bottom and sidewalls. Excavated soil would be subject to waste characterization testing prior to offsite disposal.
- Collection and off-site disposal of water encountered during excavation, decontamination water, and any other water potentially contaminated.
- Site restoration includes backfilling, as necessary, with clean backfill. The surface will be covered with a one-foot thick layer of clean fill and topsoil, and then seeded for erosion control.
- Groundwater use restriction, post-remedial groundwater monitoring, and soil vapor intrusion provision.

Present Worth:	\$1,080,000
Capital Cost:.....	\$932,000
Annual Costs:.....	\$9,300

Exhibit C

Remedial Alternative Costs

Remedial Alternative	Capital Cost (\$)	Annual Costs (\$)	Total Present Worth (\$)
#1 - No Action, SMP	15,000	11,400	190,000
#2 - Removal >1 ppm	1,670,000	9,300	1,710,000
#3 - Removal >10 ppm/Cover/SMP	968,000	9,300	1,010,000
#4 - Removal >25 ppm/Cover/SMP	932,000	9,300	1,080,000

Exhibit D

SUMMARY OF THE SELECTED REMEDY

The Department is proposing Alternative #3, Excavation / Disposal of PCB contaminated soils greater than 10 ppm, Cover System, and SMP as the remedy for this site. Alternative 3 would achieve the remediation goals of possible future Commercial development of the site by removing on-site soil exceeding 10 ppm and disposing off-site. A one-foot thick cover of clean soil would be applied to ensure compliance with the 1 ppm surface soil criterion. The elements of this remedy are described in Section 7. The selected remedy is depicted in Figure 7.

Basis for Selection

The selected remedy is based on the results of the RI and the evaluation of alternatives. The criteria to which potential remedial alternatives are compared are defined in 6 NYCRR Part 375. A detailed discussion of the evaluation criteria and comparative analysis is included in the AA report.

The first two evaluation criteria are termed "threshold criteria" and must be satisfied in order for an alternative to be considered for selection.

1. Protection of Human Health and the Environment. This criterion is an overall evaluation of each alternative's ability to protect public health and the environment.

Alternatives 2 and 3 provide the greatest overall protection to human health and the environment as the majority of contaminated soil is removed from the site, largely meeting the soil SCGs and meeting CP-51 presumptive remedy criteria. Under Alternative 2, remaining soil that exceeds criteria would be removed allowing the site to be used for restricted residential, commercial, or industrial re-use. Under Alternative 3 (1 ppm surface/10 ppm subsurface), remaining soil that exceeds criteria would be removed, the potential exposure to subsurface soil would be mitigated by a soil cover and the SMP, and the site would be suitable for commercial re-use. Under Alternative 4 (1 ppm surface/25 ppm subsurface), remaining soil that exceeds criteria would be removed, the potential exposure to subsurface soil would be mitigated by a soil cover and the SMP, and the site would be suitable for industrial re-use, however, this use is inconsistent with municipal zoning.

Alternative 1 (No Action) does not provide any protection to public health and the environment and will not be evaluated further. Alternatives 2, 3, and 4 rely on a restriction of groundwater use and SVI provision at the site, Alternatives 3 and 4 also rely on a Site Management Plan including a soil cover system to protect human health.

2. Compliance with New York State Standards, Criteria, and Guidance (SCGs). Compliance with SCGs addresses whether a remedy will meet environmental laws, regulations, and other standards and criteria. In addition, this criterion includes the consideration of guidance which the Department has determined to be applicable on a case-specific basis.

Alternatives 2 and 3 provide the greatest overall protection to human health and the environment as the majority of contaminated soil is removed from the site, largely meeting the soil SCGs and meeting CP-51 presumptive remedy criteria. Under Alternative 2, remaining soil exceeding criteria in limited areas would not present a human exposure concern and the site would be suitable for restricted-residential, commercial or industrial re-use. Under Alternative 3, potential exposure to subsurface soil would be mitigated by the SMP and the site would be suitable for commercial or industrial re-use. Alternative 4 would only allow for industrial re-use,

which would be inconsistent with land use planning. Because Alternatives 2, 3 and 4 satisfy the threshold criteria, the remaining criteria are particularly important in selecting a final remedy for the site.

The next six "primary balancing criteria" are used to compare the positive and negative aspects of each of the remedial strategies.

3. Long-term Effectiveness and Permanence. This criterion evaluates the long-term effectiveness of the remedial alternatives after implementation. If wastes or treated residuals remain on-site after the selected remedy has been implemented, the following items are evaluated: 1) the magnitude of the remaining risks, 2) the adequacy of the engineering and/or institutional controls intended to limit the risk, and 3) the reliability of these controls.

Excavating contaminated soil would be effective for the site-specific contaminants, and permanent in the long-term. Additional remedial measures would not be required at the site as long as the soil management and groundwater use restrictions and SVI provision detailed in the SMP were enforced. Alternative 2 results in removal of all of the PCB contamination at the site above 1 ppm and removes the need for a SMP and a soil cover system and long-term monitoring. Alternative 3 and 4 would result in the removal of approximately 40% and 34% of the contaminated soil, respectively, but also require an environmental easement and long-term monitoring. Alternative 2 is the most effective and permanent alternative. For Alternatives 3 and 4, site management activities will maintain the remedy effectiveness, but these Alternatives are slightly less desirable in the long-term. Each Alternative will require a groundwater use restriction and SVI provision to insure long-term effectiveness and permanence as well as site-related contamination in GW exceeding MCLs.

4. Reduction of Toxicity, Mobility or Volume. Preference is given to alternatives that permanently and significantly reduce the toxicity, mobility or volume of the wastes at the site.

Alternatives 2, 3 and 4 entail excavation and off-site disposal, thus reducing the toxicity, mobility and volume of on-site waste by transferring the material to an approved off-site location. However, depending on the disposal facility, the volume of the material would not be reduced.

5. Short-term Impacts and Effectiveness. The potential short-term adverse impacts of the remedial action upon the community, the workers, and the environment during the construction and/or implementation are evaluated. The length of time needed to achieve the remedial objectives is also estimated and compared against the other alternatives.

Alternative 2 poses the greatest short-term impacts to workers, the community, and the environment, however, similar short-term impacts will also be associated with Alternatives 3 and 4. Adequate health and safety measures must be undertaken with Alternatives 2, 3 and 4 to monitor air, control dust, and limit truck traffic. The RAOs for soil to eliminate or reduce the potential for exposure to elevated PCBs in soil without management of a soil cover would be met to the greatest extent upon completion of excavation activities with Alternative 2. However, Alternative 3 and 4 would also provide a high level of compliance with the RAO for soil although management of the site cover system will be required. The RAO for groundwater and soil vapor would be met through continued enforcement of groundwater use restrictions and SVI evaluations in the SMP for all alternatives.

6. Implementability. The technical and administrative feasibility of implementing each alternative are evaluated. Technical feasibility includes the difficulties associated with the construction of the remedy and the ability to monitor its effectiveness. For administrative feasibility, the availability of the necessary personnel

and materials is evaluated along with potential difficulties in obtaining specific operating approvals, access for construction, institutional controls, and so forth.

Alternatives 2, 3 and 4 entail excavation with off-site disposal, approaches that are favorable in that they are readily implementable. Equipment and trained personnel are readily available. Pre-design soil testing will be conducted to identify PCB concentrations in soil/fill and to develop an approach for segregating hazardous from non-hazardous PCB contaminated materials. Excavated material will be classified as hazardous or non-hazardous and transported and disposed in accordance with TSCA. Adequate health and safety measures must be undertaken for the selected remediation which will occur adjacent to a residential neighborhood. The higher volume of soil excavated under Alternative 2 would necessitate increased truck traffic on local roads.

7. Cost-Effectiveness. Capital costs and annual operation, maintenance, and monitoring costs are estimated for each alternative and compared on a present worth basis. Although cost-effectiveness is the last balancing criterion evaluated, where two or more alternatives have met the requirements of the other criteria, it can be used as the basis for the final decision.

The costs of the alternatives vary significantly. Alternative 2, with its large volume of soil to be handled, through excavation and off-site disposal would have the highest present worth and capital costs. The present worth and capital costs of Alternatives 3 and 4 are similar to each other, but approximately 50% higher for Alternative 2. Alternatives 3 and 4 require a long-term maintenance cost over 30 years and a SMP, Alternative 2 requires neither.

The costs for the excavation alternatives are driven by the amount of soil exceeding 50 ppm. Because of uncertainty in the distribution of PCB contamination, the cost estimates used conservative (i.e., worst case) estimates of the area where soil may exceed 50 ppm. Detailed pre-design testing should be conducted to better delineate PCB concentrations site wide and to develop an approach for segregating areas where hazardous PCB-contaminated soil is present. Reductions in the amount of hazardous soil disposal may significantly reduce the remedial costs.

8. Land Use. When cleanup to pre-disposal conditions is determined to be infeasible, the Department may consider the current, intended, and reasonable anticipated future land use of the site and its surroundings in the selection of the soil remedy.

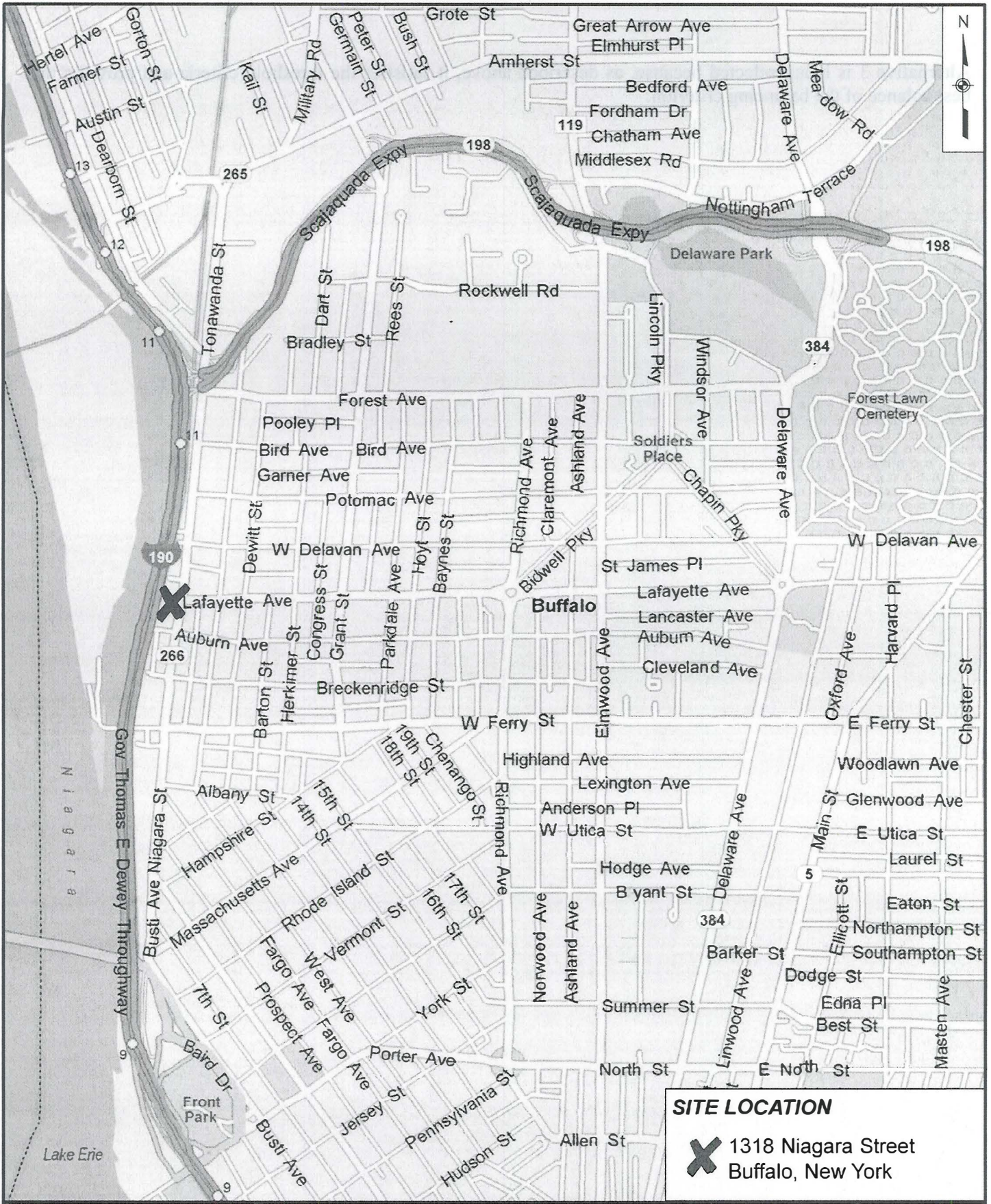
Since the anticipated use of the site is commercial, Alternatives 4 would be less desirable because only industrial SCOs are met. However, the remaining contamination with Alternative 4 would be controllable with implementation of a Site Management Plan. With Alternative 2, removing all of the contaminated overburden soil above 1 ppm, most of the unsaturated overburden would be removed, and restrictions on the site use would not likely be necessary beyond a groundwater use restriction and SVI mitigation.

The final criterion, Community Acceptance, is considered a "modifying criterion" and is taken into account after evaluating those above. It is evaluated after public comments on the Selected Remedial Action Plan have been received.

9. Community Acceptance. Concerns of the community regarding the investigation, the evaluation of alternatives, and the PRAP have been evaluated. A responsiveness summary has been prepared that describes public comments received and the manner in which the Department will address the concerns raised.

Alternative 3 is being selected because, as described above, it satisfies the threshold criteria and provides the best balance of the balancing criterion.





SITE LOCATION

X 1318 Niagara Street
Buffalo, New York

J:\1318_nia\CAD\1318 SITE MAP.pdf



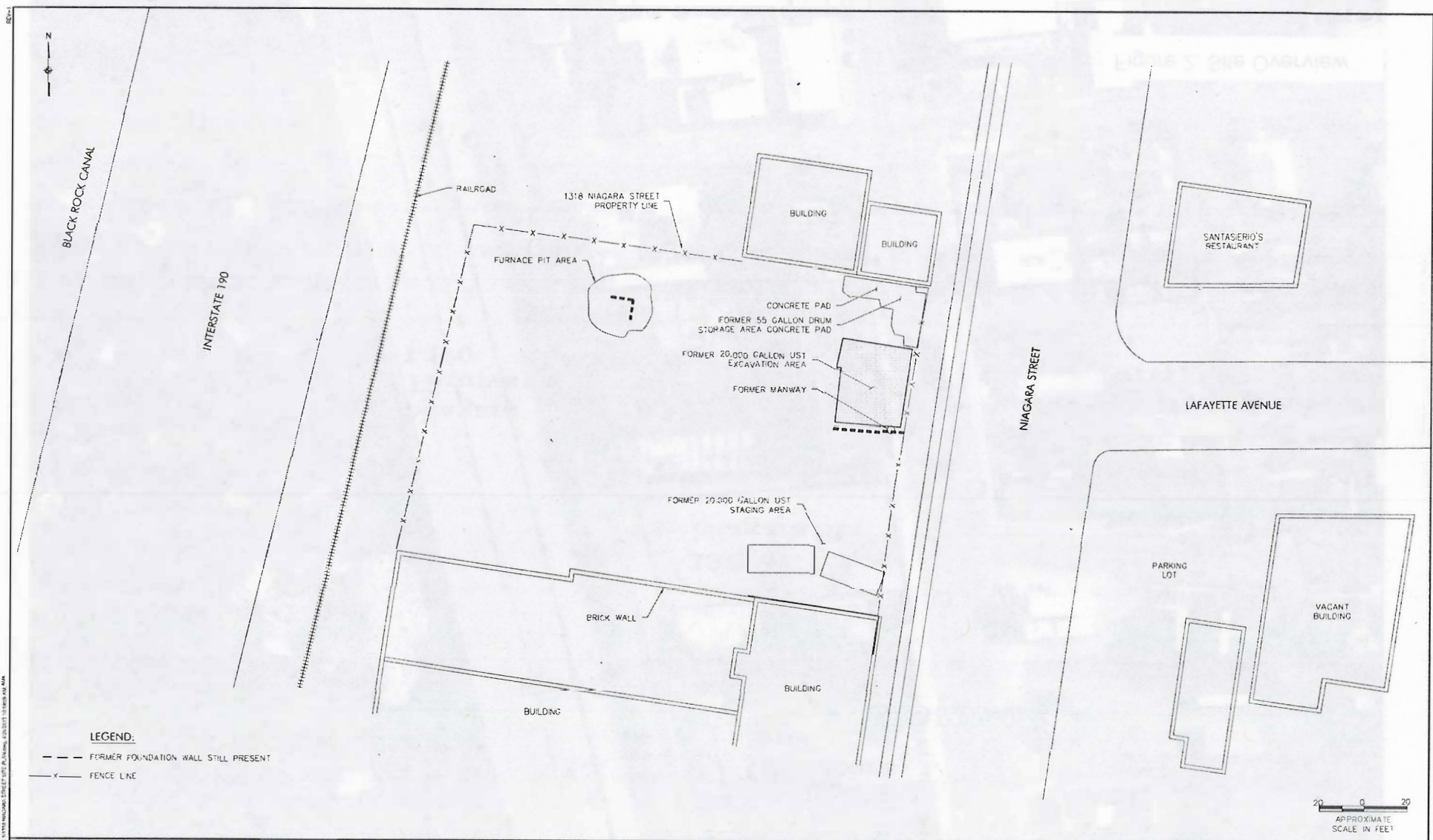
LiRo Engineers, Inc.
690 Delaware Ave.
Buffalo, New York

1318 NIAGARA STREET SITE LOCATION MAP

FIGURE NO.
1



Figure 2: Site Overview



LEGEND:
 - - - - - FORMER FOUNDATION WALL STILL PRESENT
 X - - - - - FENCE LINE

20 0 20
 APPROXIMATE
 SCALE IN FEET

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NO.	DATE	DESCRIPTION
REVISIONS		

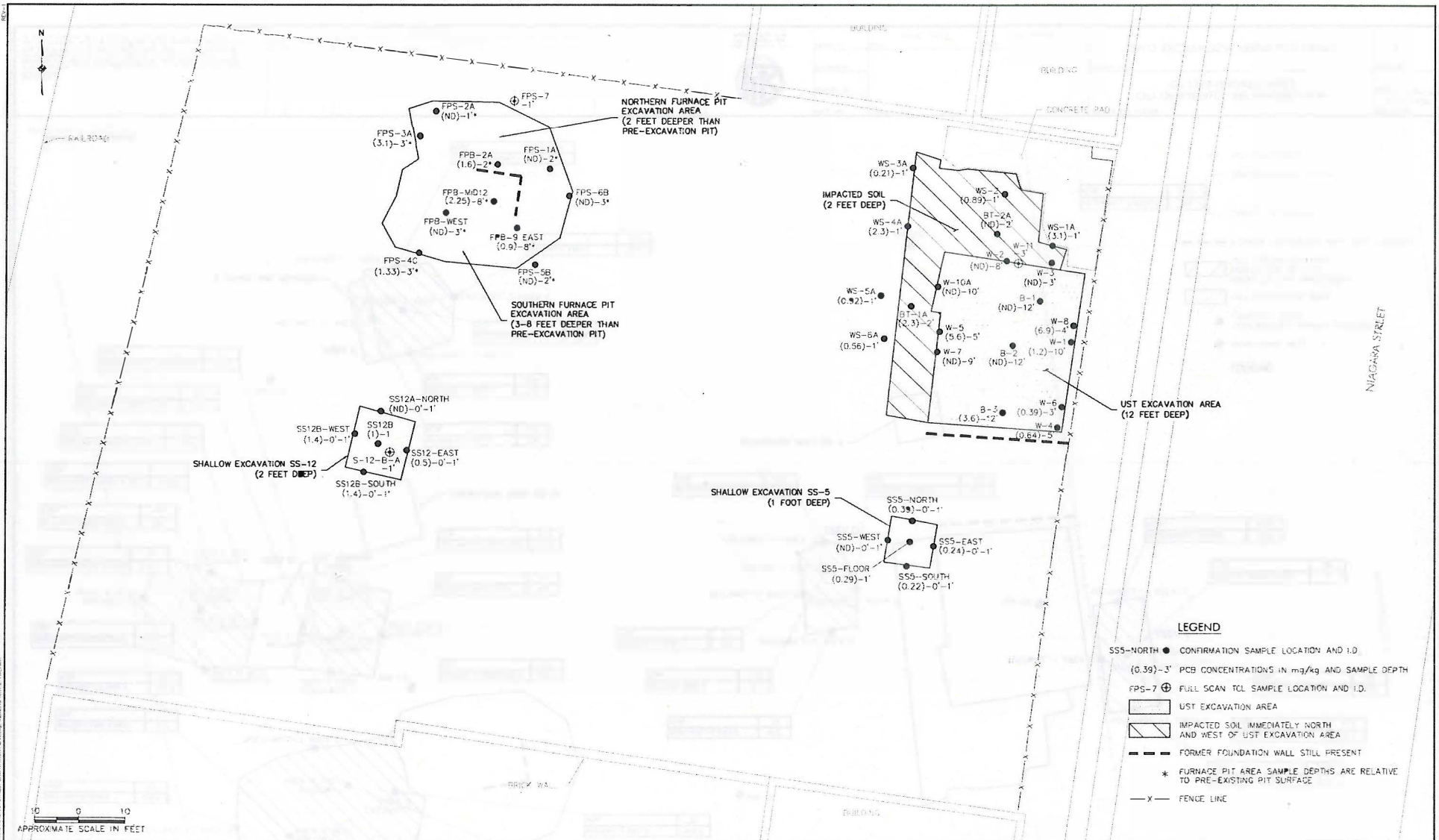


LR Engineers, Inc.
 690 Delaware Ave.
 Buffalo, New York

PROJ. ENG:	CLIENT:
DESIGNED BY:	
CHECKED BY:	
DRAWN BY:	DATE: APRIL 2013
	SCALE: AS SHOWN

PROJ. TITLE AND LOCATION:	PROJ. JOB NO.:
CITY OF BUFFALO - ERP INVESTIGATION OF 1318 NIAGARA STREET	09-29-426
DRAWING TITLE:	SHEET OF:
SITE PLAN	FIGURE NO.:
	3

1318 NIAGARA STREET, BUFFALO, NY 14202. 1318 NIAGARA STREET, BUFFALO, NY 14202. 1318 NIAGARA STREET, BUFFALO, NY 14202.



LEGEND

- SS5-NORTH ● CONFIRMATION SAMPLE LOCATION AND I.D.
{0.39}-3' PCB CONCENTRATIONS IN mg/kg AND SAMPLE DEPTH
- FPS-7 ⊕ FULL SCAN TCL SAMPLE LOCATION AND I.D.
- ▭ UST EXCAVATION AREA
- ▨ IMPACTED SOIL IMMEDIATELY NORTH AND WEST OF UST EXCAVATION AREA
- FORMER FOUNDATION WALL STILL PRESENT
- * FURNACE PIT AREA SAMPLE DEPTHS ARE RELATIVE TO PRE-EXISTING PIT SURFACE
- x- FENCE LINE

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REVISIONS		



PROJ. ENCL.	CLIENT:
DESIGNED BY:	
CHECKED BY:	
DRAWN BY:	DATE: APRIL 2013
	SCALE: AS SHOWN

JOB TITLE AND LOCATION: CITY OF BUFFALO - ERP INVESTIGATION OF 1318 NIAGARA STREET	LRK JOB NO: 09-29-426 SHEET OF
DRAWING TITLE: IRM-1 EXCAVATION AREAS AND ENDPOINT PCB RESULTS	FIGURE NO: 4



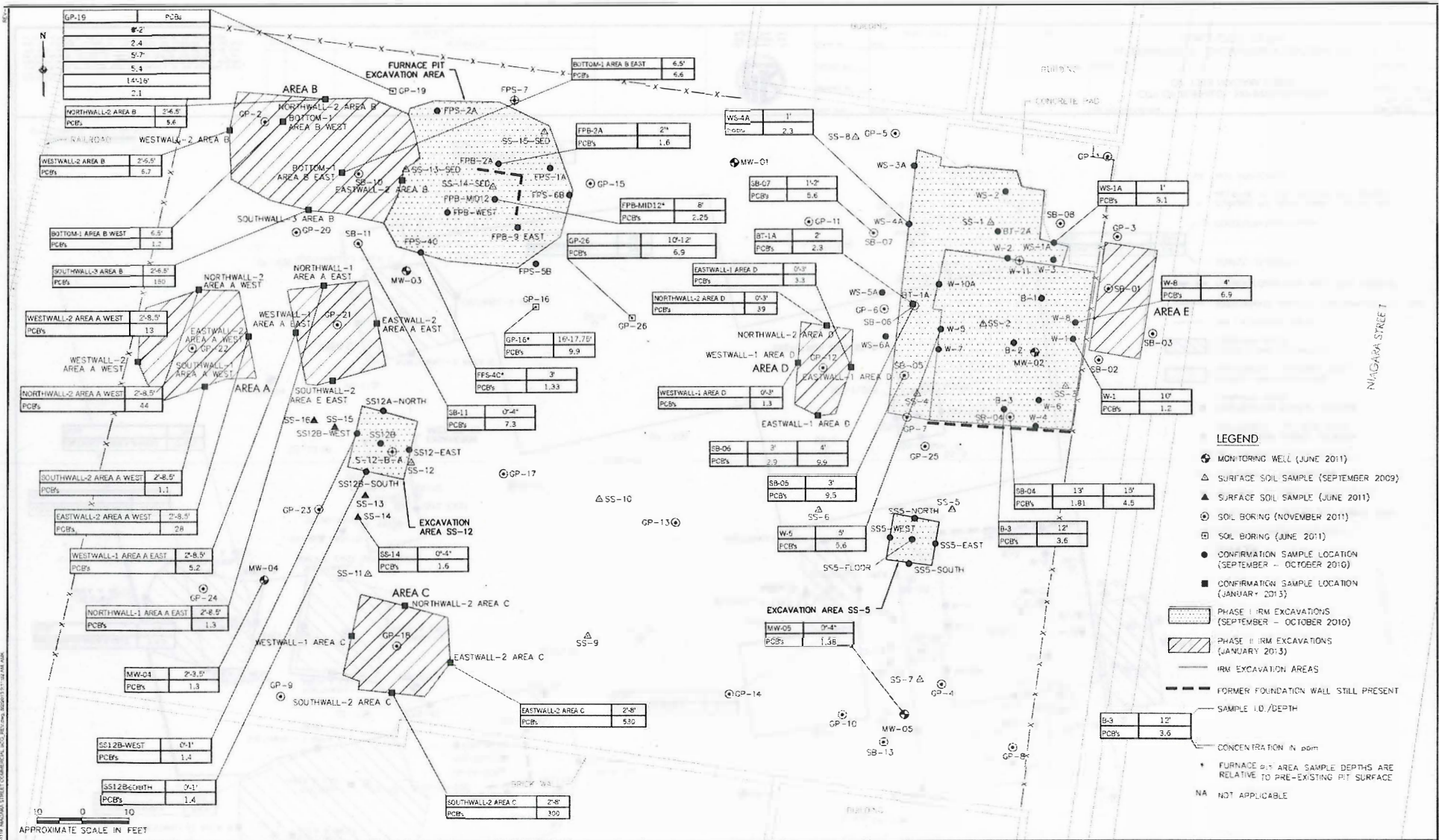
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NO.	DATE	DESCRIPTION
REVISIONS		



PROJ. ENGR.	CLIENT:
DESIGNED BY:	
CHECKED BY:	
DRAWN BY:	DATE: APRIL 2013
	SCALE: AS SHOWN

JOB TITLE AND LOCATION		PROJ. NO. NO.
CITY OF BUFFALO - ERP INVESTIGATION OF 1318 NIAGARA STREET		09-29-426
DRAWING TITLE:		SHEET OF
IRM-2 EXCAVATION AREAS AND LIMITS		FIGURE NO.
		5



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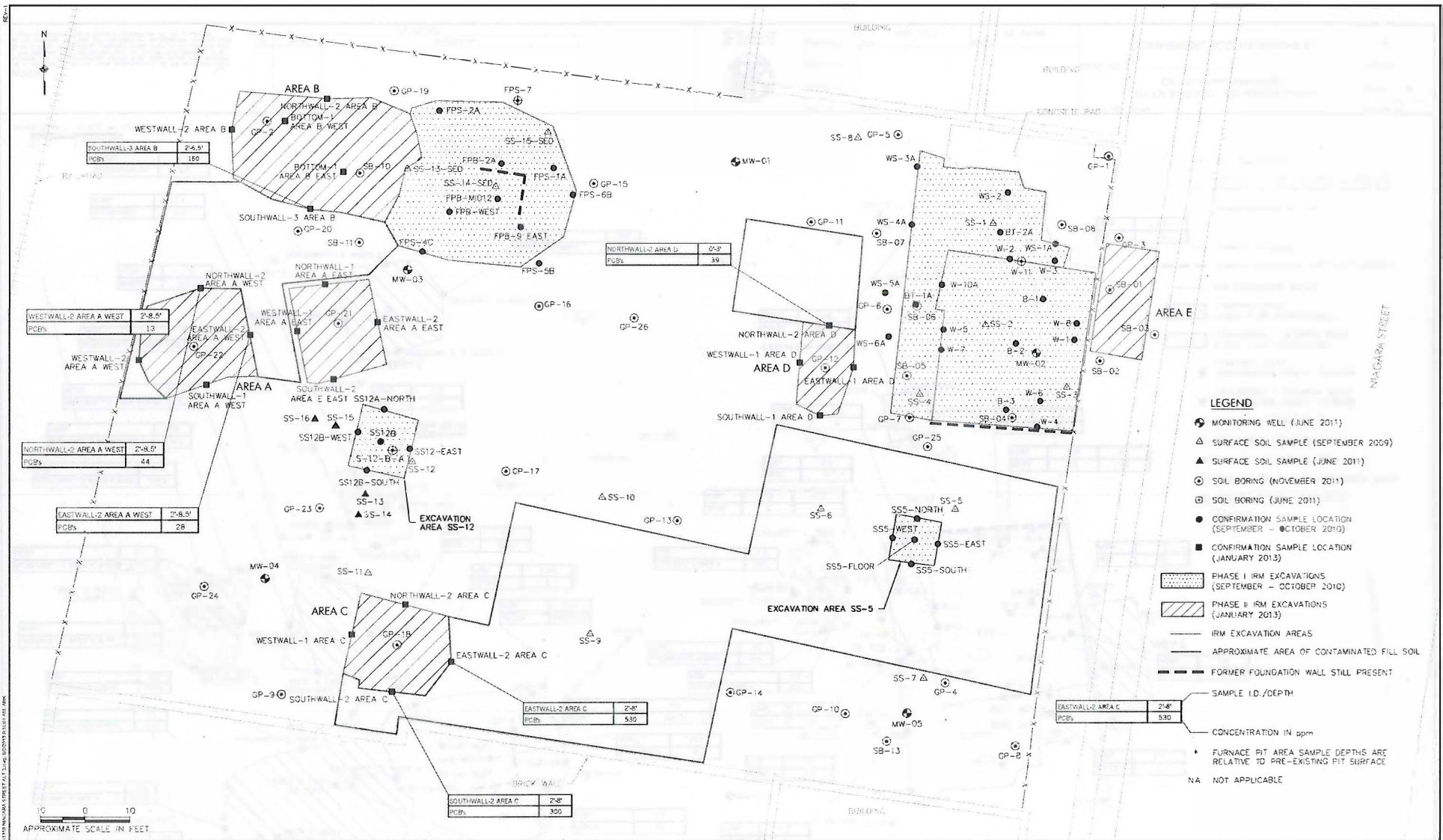
NO.	DATE	DESCRIPTION
REVISIONS		



LR Engineering, Inc.
 630 Westmore Ave.
 Buffalo, New York

PRG. ENGR.	CLIENT
DESIGNED BY	
CHECKED BY	
DRAWN BY	DATE
	JUNE 2013
SCALE:	AS SHOWN

JOB TITLE AND LOCATION	PROJ. JOB NO.
CITY OF BUFFALO - ERP INVESTIGATION OF 1318 NIAGARA STREET	09-23-426
DRAWING TITLE	SHEET OF
COMMERCIAL SCO EXCEEDANCES	6



- LEGEND**
- MONITORING WELL (JUNE 2011)
 - ▲ SURFACE SOIL SAMPLE (SEPTEMBER 2009)
 - △ SURFACE SOIL SAMPLE (JUNE 2011)
 - SOIL BORING (NOVEMBER 2011)
 - SOIL BORING (JUNE 2011)
 - CONFIRMATION SAMPLE LOCATION (SEPTEMBER - OCTOBER 2010)
 - CONFIRMATION SAMPLE LOCATION (JANUARY 2013)
 - ▨ PHASE I IRM EXCAVATIONS (SEPTEMBER - OCTOBER 2010)
 - ▨ PHASE II IRM EXCAVATIONS (JANUARY 2013)
 - IRM EXCAVATION AREAS
 - APPROXIMATE AREA OF CONTAMINATED FILL SOIL
 - FORMER FOUNDATION WALL STILL PRESENT
 - SAMPLE ID./DEPTH
 - CONCENTRATION IN ppm
 - FURNACE PIT AREA SAMPLE DEPTHS ARE RELATIVE TO PRE-EXISTING PIT SURFACE
 - NA NOT APPLICABLE

APPROXIMATE SCALE IN FEET

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NO.	DATE	DESCRIPTION
REVISIONS		



400 BIGHAM ST.
 630 DELAWARE AVE.
 BUFFALO, NY 14203

PROJ. ENGR.	CLIENT	JOB TITLE AND LOCATION	
DESIGNED BY:		CITY OF BUFFALO - ERP INVESTIGATION OF 1318 NIAGARA STREET	
CHECKED BY:			
DRAWN BY:			
	DATE	SCALE	DRAWING TITLE
	JUNE 2013	AS SHOWN	ALTERNATIVE 3 - EXCAVATION/DISPOSAL OF SOILS OVER 10 PPM

ERIC JOE NO.	09-29-426
SHEET	OF
PAGE NO.	7

RESPONSIVENESS SUMMARY

131R Niagara Street
Environmental Restoration Project
City of Buffalo, Erie, New York
800 762 8622

The proposed Remedial Action Plan (RAP) for the 131R Niagara Street site was prepared by the New York State Department of Environmental Conservation (DEC) in accordance with the requirements of the New York State Department of Health (DOH) and was issued to the public for comment on February 1, 2014. The RAP was prepared for the environmental site at the 131R Niagara Street site.

APPENDIX A

Responsiveness Summary

The purpose of this RAP was to provide the public with information regarding the project and the opportunity to comment on the proposed remedy.

A public meeting was held on February 12, 2014, which included a presentation of the RAP and an opportunity for the public to provide comments. The meeting was held at the 131R Niagara Street site as well as a discussion of the proposed remedy. The meeting provided an opportunity for citizens to discuss their concerns, ask questions and comment on the proposed remedy. These comments have been taken into consideration by the DEC. The public comment period for the RAP is closed on March 31, 2014.

The responsiveness summary responds to all questions and comments received during the public comment period. The following are the comments received at the public meeting and the Department's response:

COMMENT 1: Why are the responsible parties not being held liable for cleanup costs?

RESPONSE 1: Potentially Responsible Parties (PRPs) are those who may be legally liable for contamination at a site. This may include past or present owners and operators, waste generators and transporters. The DEC has been diligent in identifying PRPs and has been successful in recovering cleanup costs from PRPs. However, legal action may be required in a number of cases to recover cleanup costs from PRPs. The DEC is committed to providing the public with information on the state which should be held liable for cleanup costs in an effort to provide the public with information on the state which should be held liable.

COMMENT 2: If the current site is getting cleaned up, then why are there still cleanup costs?

RESPONSE 2: This remedial action plan is for the 131R Niagara Street site. The remedial action plan is for the 131R Niagara Street site and includes the remedial action plan for the 131R Niagara Street site. The remedial action plan is for the 131R Niagara Street site and includes the remedial action plan for the 131R Niagara Street site. The remedial action plan is for the 131R Niagara Street site and includes the remedial action plan for the 131R Niagara Street site.

RESPONSIVENESS SUMMARY

**1318 Niagara Street Site
Environmental Restoration Project
City of Buffalo, Erie, New York
Site No. E915213**

The Proposed Remedial Action Plan (PRAP) for the 1318 Niagara Street site was prepared by the New York State Department of Environmental Conservation (the Department) in consultation with the New York State Department of Health (NYSDOH) and was issued to the document repositories on February 4, 2014. The PRAP outlined the remedial measure proposed for the contaminated soil at the 1318 Niagara Street site.

The release of the PRAP was announced by sending a notice to the public contact list, informing the public of the opportunity to comment on the proposed remedy.

A public meeting was held on February 12, 2014, which included a presentation of the Site Investigation and Remedial Alternatives Report (SI/RAR) for the 1318 Niagara Street Site, as well as a discussion of the proposed remedy. The meeting provided an opportunity for citizens to discuss their concerns, ask questions and comment on the proposed remedy. These comments have become part of the Administrative Record for this site. The public comment period for the PRAP ended on March 20, 2014.

This responsiveness summary responds to all questions and comments raised during the public comment period. The following are the comments received at the public meeting, with the Department's responses:

COMMENT 1: Who are the responsible parties and will they be pursued to pay for cleanup costs?

RESPONSE 1: Potentially Responsible Parties (PRPs) are those who may be legally liable for contamination at a site. This may include past or present owners and operators, waste generators, and haulers. No PRPs have been documented to date. Since no viable PRPs have been identified, there are currently no ongoing enforcement actions. However, legal action may be initiated at a future date by the state to recover state response costs should PRPs be identified. The City of Buffalo will assist the state in its efforts by providing all information to the state which identifies PRPs.

COMMENT 2: What is the reason this site is getting cleaned up? Does the zoning have any bearing on the cleanup goals?

RESPONSE 2: This main contaminant of concern at this site is PCBs (polychlorinated biphenyls). PCBs were widely used as dielectric and coolant fluids, for example in electrical apparatus, cutting fluids for machining operations, carbon paper and in heat transfer fluids. Due to PCBs' environmental toxicity and classification as a persistent organic pollutant, PCB production was banned by the United States in 1979.

The City of Buffalo acquired the site through tax foreclosure and entered the Environmental Restoration Program (ERP) when the contamination was noted. Cleanup goals pertaining to future development of the site are evaluated by the applicant/owner and reviewed with input from the Department through the development of an Alternatives Analysis Report. Since zoning ultimately dictates future use, it can indirectly affect the selection of cleanup goals. The remedy must, however, be deemed protective of public health and the environment.

COMMENT 3: Can the site be converted to green space and who controls the use of the site?

RESPONSE 3: The City of Buffalo owns the site and therefore controls its future use. The selected remedy will allow the property to be developed for commercial use, which could include passive recreational uses.

COMMENT 4: Will this project be completed under the Environmental Restoration Program (ERP) and is there any funding currently in the ERP?

RESPONSE 4: The City of Buffalo will decide whether or not to continue in the ERP. Limited ERP funds were made available in 2013 and the Governor's proposed 2014-2015 budget includes additional funding for the ERP program. The Department expects to solicit applications for the available funding in the late Spring/early Summer 2014.

COMMENT 5: What are the advantages and disadvantages of the Superfund Program?

RESPONSE 5: If the City opted not to apply for ERP funding, the Department would evaluate the site for inclusion on the State's Registry of Inactive Hazardous Waste Disposal Site (i.e., the State Superfund Program). If listed on the Registry, the Department would then seek to identify a potential responsible party (PRP) for the contamination and require them to complete the remedial program. If PRPs are identified, but are unwilling or unable to pay for the cleanup, the Superfund Program would be used to conduct the cleanup. The advantage of the Superfund Program is that the State contracts out the remediation and pays for the costs, making the site available for redevelopment. The disadvantages are the additional time needed to locate and/or enforce against PRPs, the potential for a property lien for State costs, and the possible stigma attached to a "Superfund Site" in terms of future purchase and redevelopment.

COMMENT 6: What would be the level of cleanup necessary to accommodate public open space without commercial development, e.g. a building?

RESPONSE 6: The category of commercial use also includes passive recreational uses, which are public uses with limited potential for soil contact. Thus the remedy and the commercial use designation would permit use as public open space.

COMMENT 7: What types of plantings can be utilized after placement of a soil cover?

RESPONSE 7: The site can be planted with grass, shrubs, and trees as long as the required thickness of the soil cover is maintained. A Site Management Plan will be prepared which addresses future on-site excavation and management of soils, if the excavation will be greater than the depth of the cover system

Giles Kavanagh of Jergo LLC submitted a letter dated February 12, 2014 which included the following comment:

COMMENT 8: I support plans to use the 1318 Niagara Street site as open space for public use.

RESPONSE 8: Comment noted. Also see Response No. 6.

Peter Sowiski of Abaca-Press submitted an email letter on March 14, 2014 which included the following comment:

COMMENT 9: I support a level of cleanup at the site that would pave the way for public and active recreational use.

RESPONSE 9: As described in Response No. 6, passive public recreational uses are permitted. Active recreational uses (i.e., those public uses with a reasonable potential for soil contact), however, would not be permitted under the commercial use restriction.

Barbara Rowe of Abaca-Press submitted an email letter on March 17, 2014 which included the following comment:

COMMENT 9: We ask that this lot be cleaned up and capped to allow landscaping along with public use. In the event of a future development proposal, a review process should be available that includes input by neighborhood residents, businesses, and investors.

RESPONSE 9: See Response No. 3. The Department will continue to keep the public informed throughout the remediation process. Comments relative to future development proposals are best directed to local planning authorities as such approvals are beyond the scope of the ERP.

Administrative Record

1000 Niagara Street
Environmental Remediation Project
City of Buffalo, Erie, New York
Site No. E-1000

APPENDIX B

Administrative Record

1. Proposed Remedial Action Plan, dated February 2014, prepared by the Department.
2. The Department and the Environmental Remediation Commission Contract for Contract Services, dated February 2014.
3. "Physical Investigation Results," October 2013, prepared by LHA Engineers.
4. "Site Phase Part I - Site Investigation Plan," March 2011, prepared by LHA Engineers.
5. "Soil Excavation and Soil Core Bore Hole Work Plan," May 2012, prepared by LHA Engineers.
6. "Site Investigation and Remedial Alternatives Report," June 2013, prepared by LHA Engineers.
7. "Excavation Completion Report," December 2013, prepared by LHA Engineers.
8. Letter dated 02/12/14 from Gilco Technology of Long LLC.
9. Letter dated 02/14/14 from Site Investigation of Alcoa-Fluor.
10. Letter dated 02/17/14 from Hudson River of Alcoa-Fluor.

Administrative Record

**1318 Niagara Street
Environmental Restoration Project
City of Buffalo, Erie, New York
Site No. E915213**

1. Proposed Remedial Action Plan for the 1318 Niagara Street site, dated February 2014, prepared by the Department.
2. The Department and the City of Buffalo entered into a State Assistance Contract, Contract No. C304067, February 27, 2009.
3. "Preliminary Investigation Results", October 2009, Prepared by LiRo Engineers.
4. "Work Plans: Part 1 – Site Investigation Plan", March 2011, Prepared by LiRo Engineers.
5. "Limited Excavation and Soil Cover IRM Work Plan", May 2012, Prepared by LiRo Engineers.
6. "Site Investigation and Remedial Alternatives Report", June 2013. Prepared by LiRo Engineers.
7. "Construction Completion Report", December 2013, Prepared by LiRo Engineers.
8. Letter dated 02/12/14 from Giles Kavanagh of Jergo LLC.
9. Letter dated 03/14/14 from Peter Sowiski of Abaca-Press.
10. Letter dated 03/17/14 from Barbara Rowe of Abaca-Press.

Exhibit B
Legal Description of Site



BYRON W. BROWN
MAYOR

CITY OF BUFFALO
DEPARTMENT OF LAW



TIMOTHY A. BALL
CORPORATION COUNSEL

October 22, 2014

I, **John V. Heffron**, being an attorney duly admitted to the practice of law in the State of New York, affirm under the penalties of perjury the following:

1. That I am an Assistant Corporation Counsel for the City of Buffalo, the Municipality which is the applicant for State Assistance pursuant to Title 5 of Article 56 of the Environmental Conservation Law to undertake the Environmental Restoration Project (the "Project") known as 1318 Niagara Street, Buffalo, New York;
2. That the property located at 1318 Niagara Street, Buffalo, New York, Erie County (the "Property") which is the subject of the Project is more particularly described as SBL Number 0888100001010100 in the copy of the deed attached hereto;
3. That I hereby certify to the Commissioner of the New York State Department of Environmental Conservation that I have examined or caused to be examined or otherwise reviewed the title to the Property, and that I have approved the same, and that as of the date of this affirmation, a good and marketable title thereto in fee is vested in and may be conveyed by the City of Buffalo. That annexed hereto is a copy of the deed dated November 16, 2004 (which was recorded November 16, 2004 in the Erie County Clerk's Office in Liber 11086 of Deeds at page 2188) whereby such title to the Property was conveyed to the City of Buffalo. I hereby certify to the Commissioner of the New York State Department of Environmental Conservation that the 1318 Niagara Street property title which is conveyed by said deed is identical to the Property which is the subject of the Project; and
4. That I make this affirmation to be attached as an exhibit and incorporated by reference into such application for State Assistance.

John V. Heffron
Assistant Corporation Counsel

T:\wp60\RP\VVH\1318 Niagara affirmation 10-16-14.docx



CITY OF BUFFALO
DEPARTMENT OF LAW



Metes and Bounds Legal Description for 1318 Niagara Street, Buffalo, New York

THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being parts of Lots Nos. 4 and 5 of the Stevens Survey, described as follows:

BEGINNING at a point in the west line of Niagara Street distant three hundred twenty-seven and fifty hundredths (327.50) feet north Auburn Avenue; running thence northerly along the west line of Niagara Street one hundred fifty-two (152) feet; thence westerly at right angles two hundred four and thirty-seven hundredths (204.37) feet to lands of the New York Central Railroad; thence southerly along said railroad's east line one hundred fifty-six and eighty-four hundredths (156.84) feet to a point in the line fixed by agreement recorded in Erie County Clerk's Office in liber 1104 of Deeds page 360; thence easterly along said boundary line seventy-two and eighty-eight hundredths (72.88) feet to a jog; thence northerly parallel with Niagara Street four (4) feet; and thence easterly one hundred forty-four (144) feet to the point of beginning.

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City of Buffalo

77
RECEIPT
ERIE COUNTY CLERKS OFFICE
DAVID J SMARTS
COUNTY CLERK

RECEIPT: 01675982 OPR: DMZ

CITY OF BUFFALO

DESCRIPTION	TRANS AMOUNT
COUNTY	109.00
COE STATE	4.75
COE COUNTY	1.00
COE ST GEN	14.25
Total Fees	129.00

DEED-EXEMPT # TT200409611
 DATE: 11/16/2004 TIME: 12:48:49
 B/P D 11085 2188 Control# 200411160815
 CTY IN REG
 1 CITY OF BUFFALO
 2 CITY OF BUFFALO REF

RECEIPT TOTAL:	129.00
D DEBANDM	129.00
TOTAL AMOUNT TENDERED	129.00
TOTAL REFUND	.00
PAYMENT TOTAL	129.00

RE: IN REM # 38
 STRIKE DOWNS
 298 PROPERTIES

EM # 38

THIS INDENTURE made this 16TH day of NOVEMBER, 2004, between the CITY OF BUFFALO, by MICHAEL A. SEAMAN, Deputy Commissioner of Administration and Finance, and Director of the Treasury, and as REFEREE, in the proceeding hereinafter mentioned, with offices at 65 Niagara Square, Buffalo, New York 14202,

Party of the First Part, and

THE CITY OF BUFFALO, a domestic municipal corporation with its principal office and place of business in the City Hall, No. 65 Niagara Square in the City of Buffalo, County of Erie and State of New York,

Party of the Second Part,

WITNESSETH

WHEREAS, at a Term of the County Court, Erie County, held in the Erie County Hall in the City of Buffalo, New York, on the 23rd day of September, 2004, it was, among other things, ordered, adjudged and decreed by said Court in a certain proceeding then pending in the said Court entitled:

**IN THE MATTER OF FORECLOSURE OF THE TAX LIENS BY PROCEEDING IN REM
PURSUANT TO ARTICLE ELEVEN OF THE REAL PROPERTY TAX LAW BY THE CITY OF
BUFFALO, AFFECTING DISTRICT NOS. 1 THROUGH 14, INCLUSIVE.**

Premises: Various Parcels
Serial No.: See Attached List

In Rem No. 38
Index No. I 2004-1228

That the City of Buffalo is the owner and holder of good and valid tax liens against the premises described in the Petition and Notice of Foreclosure filed therein and in said judgment, and that all and singular premises described in said Petition and Notice of Foreclosure and judgment, or such part thereof as is sufficient to satisfy such tax liens, and which might be sold separately without material injury to the parties interested, be sold at public auction according to law and the practice of said Court by and under the direction of the Commissioner of Administration and Finance, enforcing officer of the City of Buffalo, or by the Deputy Commissioner of Administration and Finance, appointed REFEREE in such proceeding and to whom it was referred by the said judgment, among other things, to make such sale; that the sale be made in the City where the said premises, or the greater part thereof, are situated; that said REFEREE give public notice of the time and place of said sale according to law and the course and practice of said Court, and that any of the parties to said proceeding might become a purchaser or purchasers at such sale; that the said REFEREE execute to the purchaser or purchasers of said premises, or such a part or parts thereof as shall be sold, a good and sufficient deed or deeds or conveyance for the same and pay the taxes, assessments or water rates which are liens upon the property sold, etc.; and

WHEREAS, the said REFEREE in pursuance of the order and judgment of said Court, did, on the 25th and 26th day of October, 2004 sell at public auction in the Buffalo Convention Center, Convention Center Plaza, in the City of Buffalo, County of Erie and State of New York 14202, the premises in the said order and judgment mentioned, due notice of the time and place of such sale being first given, pursuant to said judgment, at which sale the premises hereinafter described were sold to the party of the second part for the sum of **one dollar and no more (\$1.00 & no more)**, that being the highest sum bid for the same and being the highest bidder therefor;

NOW, THIS INDENTURE WITNESSETH: That the said MICHAEL A. SEAMAN, Director of the Treasury of the City of Buffalo, as REFEREE, being the party of the first part to these presents, in order to carry into effect the sale made by him pursuant to the order and judgment of said Court, and in conformity with the statute in such case made and provided, and also in consideration of the premises and of the said sum of money so bid as aforesaid, having been first duly paid by the party of the second part, the receipt whereof is acknowledged, has bargained and sold and by these presents does grant and convey unto the said party of the second part, its successors and assigns, all of the right, title and interest which the said City of Buffalo, the County of Erie and all other persons, including the State of New York, infants, incompetents, absentees and non-residents, had at the time of the filing of said Petition and Notice of Foreclosure in said proceeding, or at any time hereafter, it being their interest in said premises which was so sold and is hereby conveyed, in and to,

FILED

NOV 16 2004

**ERIE COUNTY
CLERK'S OFFICE**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York, bounded and described as follows:

SERIAL NO.

DESCRIPTION OF PROPERTY

DISTRICT NO.

SEE SCHEDULE "A" ATTACHED

CERTIFICATE NO.

SBL NO.

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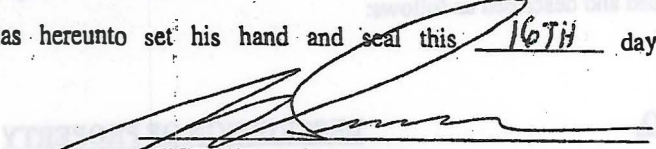
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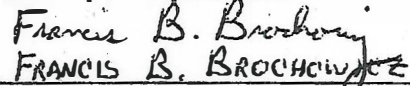
SHAVE AND TO HOLD the premises herein granted unto the grantee its successors and assigns forever.

IN WITNESS WHEREOF, the grantor has hereunto set his hand and seal this 16TH day of NOVEMBER, 2004.


MICHAEL A. SEAMAN
Director of the Treasury of the City of Buffalo,
as Referee.

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

On 16th day of November, in the year 2004, before me the undersigned, personally appeared MICHAEL A. SEAMAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


FRANCIS B. BROCHOWSKI
Commissioner of Deeds, Buffalo, New York
My Commission expires DECEMBER 31, 2004

REFEREE'S DEED

IN THE MATTER OF FORECLOSURE OF THE TAX LIENS BY PROCEEDING IN REM PURSUANT TO ARTICLE ELEVEN OF THE REAL PROPERTY TAX LAW BY THE CITY OF BUFFALO, AFFECTING DISTRICT NOS. 1 THROUGH 14, INCLUSIVE.

IN REM NO. 38
INDEX NO. I 2004-1228
PROPERTY: Various Parcels struck down to the City of Buffalo-In Rem No. 38
SERIAL NO.: Various

THE CITY OF BUFFALO, BY MICHAEL A. SEAMAN, as REFEREE

TO

THE CITY OF BUFFALO
Mailing Address: 65 Niagara Square, Buffalo, New York 14202

DATED: Nov. 16th, 2004

STATE OF NEW YORK)
ERIE COUNTY) ss.:

RECORDED ON THE
DAY OF _____ A.D.
2004, AT _____ O'CLOCK
IN LIBER _____ OF DEEDS AT PAGE _____
AND EXAMINED.

CLERK
T:\wp60\ML\IN\NREFEE\INREM38\StruckDown.deed.doc

Schedule "A"

Item #	Serial #	Property Address	SBL	District
37	933	28 ARNOLD 00030 X00105 255. E GRANT	0993500002030000	07
37	966	24 GARNER 00025 X00140 191. E DEWITT	0887400003037000	07
37	996	1318 NIAGARA 00153 X00221 206. S BRACE	0888100001010100	07
37	1291	323 JEWETT AVE 00030 X00120 90. W HILL	0904500002025000	10
37	1317	24 MANHATTAN 00030 X00122 215. N LEROY	0904600003004000	10
37	1352	102 RODNEY 00036 X00111 161. E FILLMORE	0893600005035000	10
37	1357	147 RODNEY 00029 X00115 438.50 W HOLDEN	0903700008003000	10
37	1361	273 RODNEY 00030 X00115 60. W HILL	0903700003026000	10
37	1397	35 WAKEFIELD 00030 X00120 338.21 E FILLMORE	0894400005008000	10
37	1407	54 ALMA 00030 X00136 521.98 E OLYMPIC	0906400003050000	10
37	1442	380 CORNWALL 00032 X00125 725. S SUSSEX	0907100003005000	10

Exhibit C

Municipal Resolution

**City Clerk's Department
BUFFALO**

November 13, 2014

RECEIVED

NOV 17 2014

**BUREAU OF
TECHNICAL SUPPORT**

HON. BYRON W. BROWN
MAYOR OF BUFFALO

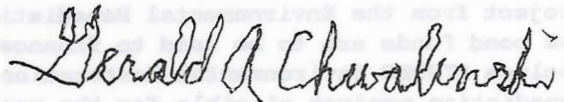
DEAR SIR:

Pursuant to the provisions of Section 3-19 of the Charter, I present herewith the attached resolution item.

No. 2260

PASSED November 12, 2014

Request for Approval of Municipal Resolution to Apply for NY Works Funds 1318 Niagara St Remediation



Gerald A Chwalinski
City Clerk



NOV 13 2014 2:29 PM

FILED

02280

17

TO: THE COMMON COUNCIL DATE: October 30, 2014
FROM: Brendan Mehaffy DEPARTMENT: Strategic Planning
DIVISION:

SUBJECT: 1318 Niagara Street Remediation
Request for approval of Municipal Resolution to apply for New York Works funds to complete remediation

PRIOR COUNCIL REFERENCE: Item # 6 CCP May 11, 2009

TEXT:

The City of Buffalo was awarded a State Assistance Contract (SAC) to undertake the Investigation/remediation at the 1318 Niagara Street property. This project was undertaken with grant funds from the NYSDEC Environmental Restoration Program (ERP), which has since expired. The NYSDEC has decided to use NYWII funding to complete certain ERP remediation projects for sites NYSDEC approved Record of Decisions. The NYSDEC has approved the 1318 Niagara Street Site to be eligible for additional funds to complete the site remediation. The City is the current owner of the property.

The estimated cost to complete the remaining remediation is \$1,010,000. The grant will permit the City of Buffalo to be reimbursed for 90% of the allowable costs of the project. Upon the future sale of the property the proceeds from the sale or lease of the property will be distributed in the following sequence:

- The City retains the amount it has spent for acquisition of the property (including back taxes owed) and its share of the Environmental Restoration Project under the grant Agreement and any prior ERP SAC or Agreement for this Site;
- The State is reimbursed for the costs it has incurred under the grant Agreement and any prior ERP SAC or Agreement for this Site; and,
- The City retains the remainder.

The Office of Strategic Planning intends to access the City's share of funds for the project from the Environmental Remediation-2008, Bond Authorization Account No. 3000-310. The bond funds are to be used to finance the cost of environmental remediation projects that include NYSDEC Environmental Restoration Program projects, making the 1318 Niagara Street remediation project eligible for the use of these funds. The City Comptroller's Office of Cash and Debt Management has confirmed that the 1318 Niagara Street remediation project is an eligible use of these funds.

I respectfully request that your Honorable Body approve the attached Municipal resolution, authorize an application to the NYSDEC for funding the remaining remediation of the 1318 Niagara Street site as set forth above and designate the Executive Director of the Office of Strategic Planning the Designated Authorized Representative to act in behalf of the City of Buffalo in all matters related to State assistance.

DEPARTMENT HEAD NAME: Brendan Mehaffy
TITLE: Executive Director, Office of Strategic Planning

SIGNATURE OF DEPARTMENT HEAD: B Mehaffy

5

Application Appendix 2: Municipal Resolution

Resolution (or other authorizing document) authorizing the items listed below pursuant to the New York Works II Environmental Restoration Projects funding.

WHEREAS,

the City of Buffalo
(Legal Name of Municipality)

herein called the "Municipality", after thorough consideration of the various aspects of the problem and study of available data, has hereby determined that certain work, as described in its application and attachments, herein called the "Project", is desirable, is in the public interest, and is required in order to implement the Project; and

WHEREAS, Article 56 of the Environmental Conservation Law authorizes State assistance to municipalities for environmental restoration projects by means of a contract and the Municipality deems it to be in the public interest and benefit under this law to enter into a contract therewith;

WHEREAS, the enacted Executive Budget for State Fiscal Year 2013-2014 (the "13/14 Budget"), as reflected in Chapter 54, Laws of 2013 (the "Laws of 2013"), provided New York Works II funding for services, expenses, and indirect costs related to various environmental projects including, but not limited to, environmental restoration projects. The Law allows the Department of Environmental Conservation (the "Department") to enter into agreements with municipalities to undertake environmental restoration projects on behalf of a municipality upon request, provided that the municipality shall provide ten percent of the total project costs (hereinafter referred to as "NYWII ERP"); and

NOW, THE FORE, BE IT RESOLVED BY

the City of Buffalo Common Council
(Municipal Authority)

1. That

the Executive Director, Office of Strategic Planning
(Title of Designated Authorized Representative)

is the representative authorized to act in behalf of the Municipality's in all matters related to State assistance under ECL Article 56, Title 5. The representative is also authorized to make a request to the Department (by applying for participation in the NYWII ERP) to enter into an agreement to undertake an environmental restoration project on behalf of the Municipality, execute the NYW II ERP Agreement, submit Project documentation, and otherwise act for the Municipality's governing body in all matters related to the Project and to State assistance;

2. That the Municipality agrees that it will fund its portion of the cost of the Project by reimbursing the Department ten percent (10%) of Project costs and that funds will be available to

reimburse the Department within ninety (90) days after receipt of an invoice from the Department.

3. That one (1) certified copy of this Authorization be prepared and sent to the Albany office of the New York State Department of Environmental Conservation together with the Application for Participation in NYWII ERP;

4. That this Authorization takes effect immediately.

CERTIFICATE OF RECORDING OFFICER

(If authorization is in the form of a municipal resolution)
That the attached Resolution is a true and correct copy of the Resolution, as regularly adopted at a legally convened meeting of the

Common Council
(Name of Governing Body of Applicant)

duly held on the 12th day of November, 2014; and further that such Resolution has been fully recorded in the

Council Proceedings in my office.
(Title of Record Book)

In witness thereof, I have hereunto set my hand this 14th day of

November, 2014.

Gerald R. Chwalinski
Signature of Recording Officer

If the Applicant has an Official Seal, Impress here.

CITY CLERK
Title of Recording Officer

Approval of Municipal Resolution for Apply for NY Works Funds – 1318 Niagara Street Remediation (Nia) (Strat Plan)

Mr. Smith moved:

That the above item be, and the above communication from the Executive Director of the Office of Strategic Planning, dated October 30, 2014, be received and filed;

That the Common Council hereby authorizes the Executive Director of the Office of Strategic Planning to access the City’s share of funds from a State Assistance Contract (SAC) to undertake the Investigation/Remediation at the 1318 Niagara Street property. The estimated cost to complete the remaining remediation is \$1,010,000.00. The grant will permit the City to be reimbursed for 90% of the allowable costs of the project. The Office of Strategic Planning intends to access the City’s share of funds for the project from the Environmental Remediation-2008, Bond Authorization Account No. 3000-310. The bond funds are to be used to finance the cost of environmental remediation projects that include New York State Department of Environmental Conservation (NYSDEC) Restoration Program projects; and

That the Common Council hereby approves the municipal resolution submitted by the Executive Director of the Office of Strategic Planning; and that the Common Council hereby authorizes the application to the NYSDEC for funding the remaining remediation of the 1318 Niagara Street site; and that the Common Council hereby designates the Executive Director of the Office of Strategic Planning the Designated Authorized Representative to act on behalf of the City of Buffalo in all matters related to the State assistance.

PASSED

PASSED

Agreement between the City of Buffalo and Buffalo Place, Inc. (DPW)

Mr. Smith moved:

That the above item be, and the above communication from the Commissioner of the Department of Public Works, Parks and Streets, dated November 6, 2014, be received and filed; and

That the Common Council hereby authorizes and agreement between the City of Buffalo and Buffalo Place, Inc. which expands and extends the scope of services and the term of the agreement between the City and Buffalo Place, Inc. for the maintenance services at Buffalo Place, such as cleaning, snow removal, painting, litter control/removal, garbage collection, grass mowing, and certain other repairs to include more specialized snow plowing as it required with the introduction of "Cars on Main Street" over refurbished light rail transit track, expanded park work and various other expanded tasks. The term expiration is proposed as being extended from June 30, 2015 through June 30, 2017, and the annual fee payable to Buffalo Place is proposed to increase from \$125,000.00 to \$175,000.00 in the year July 1, 2014 through June 30, 2015 and continue at the \$175,000.00 annual amount in the years July 1, 2015 through June 30, 2016, and July 1, 2016 through June 30, 2017; and

That the Common Council hereby authorizes the Mayor to execute a new agreement with Buffalo Place, Inc. continuing the referenced terms, with only such clarifications and modifications as are recommended by the Corporation Counsel's Office in conjunction with finalizing the final form of the agreement with Buffalo Place, Inc.; and that the Common Council hereby authorizes the Mayor and/or other City personnel to enter into such agreements and other appropriate arrangements and to take all such steps and actions as shall be necessary to facilitate the new agreement.

Funding will be available in Account #17210006-435004 and an account(s) to be named at a later date.

PASSED