

Rec'd 3/7/04

-PGW 3/3/04

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

IN RE:

SDRA/Willow Street Property, LLC
and
The Village of Potsdam

BROWNFIELD SITE
CLEANUP AGREEMENT

Route 11
Potsdam, New York

Index # D6-0001-1202
Site # C00623-6

WHEREAS, the Brownfield Cleanup Program Act was enacted to encourage the voluntary remediation of brownfield sites for reuse and redevelopment so as to advance the policy of the State of New York to conserve, improve, and protect its natural resources and environment, and control water, land, and air pollution; and

WHEREAS, the Department of Environmental Conservation (the "Department") is authorized to administer the Brownfield Cleanup Program contained in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, SDRA/Willow Street Property, LLC and the Village of Potsdam entered into a Voluntary Cleanup Agreement, Index #D6-0001-1202, relative to property located on Route 11 in the Village of Potsdam, St. Lawrence County, Tax Map Identifier # 64.058-03-23, 64.058-03-24, and 64.058-03-25 which Agreement has an effective date of March 7, 2003; and

WHEREAS, Applicant has made a request to participate in the Brownfield Cleanup Program as Volunteers and have certified eligibility; and

WHEREAS, upon consideration of the factors enumerated in ECL 27-1407(8) and (9), the Department made a determination, based upon the information contained in the application for the Voluntary Cleanup Agreement and the certifications made by the Applicant, that Applicant is eligible to participate in the Brownfield Cleanup Program as a Volunteer as defined in ECL 27-1405(1)(b);

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

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit a written citizen participation plan prepared in accordance with the requirements of ECL 27-1417 that, at a minimum: (i) updates the names and addresses of the interested public and includes a brownfield site contact list; (ii) identifies major issues of public concern related to the Site; (iii) includes a description of citizen participation activities already performed; and (iv) includes a description and schedule of public participation activities that are either specifically required by

law or are needed to address public concerns related to the Site. The Citizen Participation Plan shall be attached to and incorporated into this Agreement as Exhibit "A."

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14 and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site;
2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site;
3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or
4. "OM&M Work Plan" if the Work Plan provides for post-remedial construction operation, maintenance, and/or monitoring.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted within forty (40) days after the effective date of this Agreement. Thereafter, the Applicant can submit such other and additional work plans as it deems appropriate.

2. A proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts to approve, modify, or reject a proposed Work Plan within forty-five (45) Days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i) Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an enforceable part of this Agreement as Exhibit "C" and shall be implemented in accordance with the schedule contained therein.

ii) If the Department modifies a Work Plan, the reasons for such modification shall be provided in writing. Within twenty (20) days after receiving written notice of such disapproval, Applicant shall elect in writing to (a) implement the Work Plan as modified; (b) implement any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Paragraph XIII.

iii) If the Department disapproves a Work Plan, the reasons for such disapproval shall be provided in writing. In the event the Department disapproves a Work Plan, within twenty (20) days after receiving written notice of such disapproval, Applicant shall elect in writing to (a) modify or expand it within thirty (30) days of receipt of the written disapproval notice; (b) complete any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Subparagraph XIII.

3. An OM&M Work Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities, Applicant shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Applicant to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and which shall be enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Applicant invokes dispute resolution pursuant to Paragraph XIV, either party may terminate this Agreement pursuant to Paragraph XIII.

D. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Applicant shall submit a final report that shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; and "as-built" drawings.

i) The final report for an Investigation Work Plan shall comply with the requirements set forth at ECL 27-1411(1) and shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan. If such Final Report concludes that no remediation is necessary, and the Site does not meet the

requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL 27-1413 that supports such determination.

ii) A Final Engineering Report certifying that remediation of the Site has been performed in accordance with this Agreement shall be prepared by a Professional Engineer (or other expert approved by the Department) with primary responsibility for the day to day performance of the activities under this Agreement shall be prepared in accordance with the requirements of ECL 27-1419(1) and (2) and shall contain a certification that all such activities were performed in accordance with the Department approved Work Plan. The Department shall review such Report, the submittals made pursuant to the Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with the requirements of ECL 27-1419. Such Certificate of Completion may be modified or revoked, after notice and an opportunity for hearing, upon a finding that (a) Applicant failed to comply with this Agreement; (b) Applicant made a misrepresentation of material fact in connection with its Application or its certification that cleanup levels required by this Agreement were reached; or (c) good cause exists for such modification or revocation.

iii) All other Work Plan final reports shall contain a certification by a Professional Engineer with primary responsibility for the day to day performance of the activities under this Agreement that all such activities were performed in full accordance with the Department approved Work Plan.

2. Within sixty (60) days of the Department's approval of a final report, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XIII.

E. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reasons for its disapproval and may request Applicant to modify or expand the submittal. Within twenty (20) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIV; or (iv) terminate this Agreement pursuant to Paragraph XIII. If Applicant submits a revised submittal

and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

F. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each final report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL 27-1417(3)(e). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be filed an Environmental Easement in accordance with Paragraph X within sixty (60) days of receipt of the Department's determination.

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or a revision to an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL 27-1415(3). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(e) and the Citizen Participation Plan developed pursuant to Paragraph I of this Agreement. If the Department determines following the close of the public comment period that revisions are needed, Applicant agrees to negotiate revisions to the proposed Remedial Work Plan in accordance with Paragraph II.C. If Applicant elects not to develop a Work Plan under this Subparagraph or if either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XIII.

G. Submission of Annual Reports, if required

In the event that the remedy for the Site, if any, or any Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Applicant shall file a report annually (unless a different frequency is specified in an approved Work Plan) on the 1st day of the month following the anniversary of the start of the OM&M and continuing until the Department notifies Applicant in writing that such report may be discontinued. Such report shall be signed by a Professional Engineer or by an expert 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 OM&M Plan. Applicant shall notify the Department within twenty-four (24) hours of discovery of any upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, Applicant 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 report required by this Subparagraph as well as in any progress reports required by Paragraph XI. Applicant 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 or other expert approved by the Department stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

III. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this 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. Applicant 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 Agreement. Applicant 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

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL 27-1431.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement.

V. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs incurred pursuant to the Voluntary Agreement referenced herein, for negotiating this Agreement, and all costs associated with this Agreement up to and including the date upon which the Certificate of Completion is issued, the Department approves the final report relative to OM&M, or this Agreement is terminated pursuant to Paragraph XIII, whichever is later.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. 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.

C. Such invoice shall be sent to Applicant at the following address:

David W. Stoner
SDRA/Willow Street Property, LLC
430 E. Genesee Street
Syracuse, New York 13202

D. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, Albany, NY 12233-7012

E. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

F. Applicant may contest, in writing, invoiced costs under this Agreement if it believes (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities reimbursable under this Agreement; or (iii) the Department is not otherwise legally entitled to such costs. If Applicant objects to an invoiced cost, Applicant shall pay all costs not objected to within the time frame set forth in Subparagraph V.A and shall, within thirty (30) days of receipt of an invoice, identify in writing all costs objected to and identify the basis of the objection. This objection shall be filed with the Director of the Bureau of Program Management ("BPM Director") who shall have the authority to relieve Applicant of the obligation to pay invalid costs. Within forty-five (45) days of the Department's determination of the objection, Applicant shall pay to the Department the amount which the BPM Director or the BPM Director's designee determines Applicant is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

G. In the event any instrument for the payment of any money due under this Agreement fails of collection, such failure of collection shall constitute a violation of this

Agreement, provided (i) the Department gives Applicant written notice of such failure of collection, and (ii) the Department does not receive from Applicant a certified check or bank check within fourteen (14) days after the date of the Department's written notification.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL 27-1421, subject to the terms and conditions stated therein. A Notice of the Liability Limitation shall be filed with the recording officer of the county in which the Site is located within thirty (30) days of (i) the effective date of the Certificate of Completion or (ii) the date Applicant acquires title to the Site, whichever is later.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL 27-1425, which is proposed for the Site. In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within thirty (30) days after the Department's determination pursuant to Subparagraph VII.F.1 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36. The submittal shall be substantially similar to Exhibit "B." Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such 30 day period).

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this 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 or other expert approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph XI.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information, information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, efforts made to mitigate such delays, and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Communications

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

1. Communication from Applicant shall be sent to:

Darrell Sweredoski, P.E.
New York State Department of Environmental Conservation
Region 6 Headquarters
317 Washington Street
Watertown, New York 13601-3787

Note: three copies (one unbound) of work plans are required to be sent.

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Note: two copies of work plans are required to be sent, and

Michael Lesser, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
625 Broadway
Albany, New York 12233-5500
Correspondence only

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

David W. Stoner
SDRA/Willow Street Property, LLC
430 E. Genesee Street
Syracuse, New York 13202

Paul Stevenson, Director
Potsdam Planning and Development
Potsdam Civic Center
P.O. Box 5168
Potsdam, New York 13676

B. The Department and Applicant 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 XII or in Paragraph V.

XIII. Termination of Agreement

Applicant may terminate this Agreement at any time by providing written notification to the Department. The Department may terminate this Agreement at any time pursuant to Subparagraph XV.A. or if the Applicant fails to substantially comply with the Agreement's terms and conditions. The Department shall provide written notification to the Applicant setting forth the basis for termination of the Agreement. The termination shall be effective the 5th day after the Applicant's receipt of such written notification, except that such termination shall not affect the provisions contained in Paragraphs V and VIII.

XIV. Dispute Resolution

A. In the event disputes arise regarding any notice of disapproval of a submittal, proposed Work Plan or final report, or during the implementation of any Work Plan, Applicant may, within thirty (30) days of receipt of such notice, request in writing informal negotiations with the Department in an effort to resolve the dispute. The Department and Applicant shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIV.B. The period for informal negotiations shall not exceed thirty (30) days from Applicant's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Applicant notifies the Department in writing within thirty (30) days after the conclusion of the thirty (30) day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XIV.B.

B. 1. Applicant shall file with the Office of Hearings and Mediation ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Applicant relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director of the Division of Environmental Remediation ("DER Director") and to the parties listed under Subparagraph XI.A.1.

2. The Department shall serve its Statement of Position no later than twenty (20) days after receipt of Applicant's Statement of Position.

3. Applicant shall have the burden of proving by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M can conduct meetings, in person or via telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M shall prepare and submit a report and recommendation to the DER Director who shall issue a final decision resolving the dispute in a timely manner. The final

decision shall constitute a final agency action and Applicant shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Applicant notifies the Department within thirty (30) days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) days after receipt of a copy of the Director's final decision. Applicant shall be in violation of this Agreement if it fails to comply with the final decision resolving this dispute within forty-five (45) days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the forty-five (45) day period provided. In the event that Applicant seeks judicial review, Applicant shall be in violation of this Agreement if it fails to comply with the final Court Order or settlement within thirty (30) days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

5. The invocation of dispute resolution shall not extend, postpone, or modify Applicant's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a Court determines otherwise. The invocation of the procedures set forth in this Paragraph XV shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Applicant regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph XIV which shall be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph XIV shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622 or Section 375-2.1.

XV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V and VI, shall be null and void *ab initio* fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIV, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued under this Agreement shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

B. Applicant shall allow the Department to attend, and shall notify the Department at least seven (7) days in advance of, any field activities to be conducted pursuant to this Agreement, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; nothing in this Agreement shall be

construed to require Applicant to allow the Department to attend portions of meetings where privileged matters are discussed.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement that (i) is conducted on the Site or on different premises that are under common control or contiguous to or physically connected with the Site and such activity manages exclusively hazardous waste and/or petroleum from such Site, and (ii) satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit, as determined by the Department.

D. Applicant shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Applicant's obligations under this Agreement. If, despite Applicant's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Agreement are not obtained, Applicant shall promptly notify the Department, and include a summary of the steps taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to Subparagraph II.C of this Agreement to reflect changes necessitated by the lack of access and/or approvals.

E. All approved Work Plans, Final Reports, and other documents required under this Agreement shall be submitted to the Department in an electronic format acceptable to the Department within thirty (30) days of approval. If any document cannot be converted into electronic format, Applicant shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

F. Applicant shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and shall condition all contracts entered into to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Applicant or its contractor(s) shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Applicant shall nonetheless be responsible for ensuring that Applicant's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

G. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

H. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of Applicant's obligation to obtain

such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "C."

Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, other than a provision of a Work Plan or a time frame, Applicant shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XII.A.1.

ii. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Agreement.

iii. Changes to a time frame set forth in this Agreement shall be accomplished by a written request to the Department's project attorney and project manager, which request shall not be unreasonably denied.

I. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of Applicants under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners, including limited partners who act as general partners, under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XV.H.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation as provided under Paragraph V.

J. Applicant shall be entitled to contribution protection to the extent authorized by ECL 27-1421(6).

K. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

L. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

M. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

N. Applicant's obligations under this Agreement represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

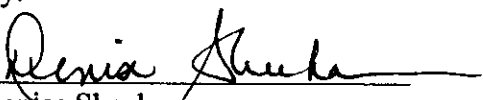
O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

P. This Agreement supercedes and replaces the Voluntary Cleanup Agreement referenced herein.

DATED: JAN 14 2004

ERIN M. CROTTY, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND
TRUSTEE OF THE STATE'S NATURAL
RESOURCES

By:


Denise Sheehan,
Executive Deputy Commissioner

CONSENT BY APPLICANT

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

SDRA/Willow Street Property, LLC

By: _____

Title: _____

Date: _____

STATE OF NEW YORK)

) ss:

COUNTY OF _____

On the 15th day of December, in the year 2003, before me, the undersigned, personally appeared David Smer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Danielle Scarcella

Signature and Office of individual
taking acknowledgment

DANIELLE SCARCELLA
Notary Public, State of New York
Qual. in Onondaga Co. No. 01SC6096467
Commission Expires July 28, 2007

CONSENT BY APPLICANT

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

The Village of Potsdam

By: Ruth F. Garner

Title: Mayor

Date: December 17, 2003

STATE OF NEW YORK)

) ss:

COUNTY OF St. Lawrence)

On the 17th day of December, in the year 2003, before me, the undersigned, personally appeared Ruth F. Garner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Cindy J. Vivlamore
Signature and Office of individual
taking acknowledgment

CINDY J. VIVLAMORE, Notary Public
In The State of New York
Qualified in St. Lawrence County
My Commission Expires Feb. 28, 2005

EXHIBIT "A"
Citizen Participation Plan

EXHIBIT "B"

Environmental Easement

EXHIBIT "C"

Approved Work Plans