

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

-
IN RE:

Municipality Name:

Site Name:

Site Address:

Site Number:

Contract Number: _____

-
This CONTRACT is made between the New York State Department of Environmental Conservation (Department), acting for and on behalf of the State, and the _____
_____ (Municipality), with offices located at
_____.

WHEREAS, the Department is authorized by Article 56 of the New York State Environmental Conservation Law (hereinafter the "ECL") to enter into contracts on behalf of the State to provide State Assistance; 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, the Legislature authorized the Department to enter into contracts with municipalities to provide State Assistance to them to develop and implement Environmental Restoration Program projects approved by the Department for eligible properties held in title by them; and

WHEREAS, Municipality has applied for State Assistance to develop and implement an Environmental Restoration Program project (Project), the purpose and scope of which is set forth in Schedule A (Scope of Work) of this Contract, on Site that is described in Appendix C 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, Municipality agrees to undertake all work and to comply with all terms and conditions of this Contract; and

WHEREAS, Municipality submitted an approvable application for State Assistance, including submission of its documentation of its authorization to enter into this Contract, and of its authorization of the person signing the same to do so; and

WHEREAS, Municipality agrees that it will fund its portion of the cost of said Project in accordance with the cost-sharing provisions of Title 5 of ECL Article 56 and its regulations; and

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

WHEREAS, Municipality has complied and commits to continue to comply with the requirements for State Assistance to 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. Public Participation Plan

Municipality agrees to implement the Department-approved Public Participation Plan (Plan) for this Project in accordance with its terms, a copy of which plan is set forth in the work plan and incorporated into this Contract. The Plan must provide that if the Municipality elects not to proceed with remediation of the Site, the Municipality shall provide timely and accessible disclosure of the Municipality's decision and the results of the investigation to the interested public. The plan shall provide for adequate public notice of the Municipality's decision and availability of the investigation results for a period of no more than 45 days from the date of the notice. The plan shall provide an opportunity for submission of written comments to Municipality and the Department; and the Municipality shall file the notice of the results of the investigation in the office of the Recording Officer for the county or counties where the land is situated, as authorized by subdivision three of section three hundred sixteen-b of the Real Property Law.

II. Development, Performance and Reporting of Work Plans

A. Work Plan Requirements

Municipality shall prepare and implement the work plans ("Work Plan" or "Work Plans") under this Contract in accordance with the requirements of ECL Article 56 Title 5 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 at and emanating from the Site.
2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for the Site.
3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or
4. "Site Management Plan"

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Contract shall be submitted within forty (40) days after the effective date of this Contract or such reasonable time as the Department may approve. Thereafter, Municipality 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 any public comment period, if applicable, whichever is later, or such reasonable time as the Department may approve. 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 Contract and shall be implemented in accordance with the schedule contained therein. 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, Municipality shall elect in writing to modify or expand it within 30 days of such disapproval notice, or complete any other Department-approved Work Plan(s).

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or the Remedial Work Plan.

4. During all field activities, Municipality 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 Municipality 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 Contract.

D. Progress Reports

Municipality shall submit a written progress report of its actions under this Contract to the parties identified in Paragraph XV by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan, 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 Municipality in connection with this Site, whether under this Contract 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 Public

Participation Plan during the previous reporting period and those anticipated for the next reporting period.

E. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Municipality 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. The final report for an Investigation Work Plan shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Contract that those activities were performed in full accordance with the Investigation Work Plan, and all other Work Plan final reports shall contain a certification made by a Professional Engineer with primary responsibility for the day to day performance of the activities under this Contract 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 or such reasonable time as the Department may approve, Municipality shall submit such additional Work Plans as it proposes to implement.

F. Remedial Investigation/Alternatives Analysis Report

Municipality shall develop an Remedial Investigation/Alternatives Analysis Report (“RI/AAR”) and submit such evaluation to the Department for review and approval as a Final Report on the Investigation of the Site.

G. Review of Submittals Other Than Work Plans

1. The Department shall timely notify Municipality 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 Contract.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reasons for its disapproval and may request Municipality to modify or expand the submittal. Within twenty (20) days after receiving written notice that Municipality’s submittal has been disapproved, Municipality shall elect in writing to: (I) modify or expand it within 30 days of such disapproval notice; (ii) complete any other Department-approved Work Plan(s); or (iii) invoke dispute resolution pursuant to Paragraph XVII. If Municipality submits a revised submittal and it is disapproved, the Department and Municipality may pursue whatever remedies may be available under this Contract or under law.

H. Department’s Determination of Need for Remediation

The Department shall determine upon its approval of the Alternatives Analysis 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 determination that remediation, or additional remediation, is not needed for protection of public health and the environment, it shall prepare for public comment a Proposed Remedial Action Plan (“PRAP”) setting forth that No Further Action is an appropriate remedy for the Site. If the proposed remedy for the Site remains the same after the public comment period has passed and a Responsiveness Summary has been prepared, the Department shall issue a Record of Decision (“ROD”) containing such “No Further Action” remedy. This Contract shall then terminate upon the Department’s issuance of a Satisfactory Completion of Project letter.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, the Department shall prepare for public comment a PRAP, setting forth that No Further Action is an appropriate remedy for the Site as long as certain institutional and engineering controls, if necessary, are implemented. If the proposed remedy for the Site remains the same after the public comment period has passed and a Responsiveness Summary has been prepared, the Department shall issue a ROD and Municipality shall implement a “Site Management Plan”, if required by the Department to ensure sufficient protection of the public health and the environment. Municipality shall satisfy the requirements of Paragraph XIII of this Contract with respect to causing an Environmental Easement to be filed and furnishing proof of filing to the Department. Upon receiving proof that Municipality has complied with Paragraph XIII of this Contract, this Contract shall terminate upon the Department’s issuance of a Satisfactory Completion of Project letter.

3. If the Department determines that remediation, or additional remediation, is needed, the Department shall prepare a PRAP for public comment setting forth the Department’s preferred remedial alternative for the Site. Within 60 days of the Department’s issuance of a ROD, Municipality may elect to submit for review and approval a proposed Remedial Work Plan to conduct an Environmental Restoration Program remediation project on the Site.

i. If Municipality elects not to submit or negotiate a proposed Remedial Work Plan under this Subparagraph, then Municipality shall comply with the Public Participation requirements under Paragraph I of this Contract; implement a “Site Management Plan”, if required by the Department to ensure sufficient protection of the public health and the environment; and Municipality shall satisfy the requirements of Paragraph XIII of this Contract with respect to causing an Environmental Easement to be filed and furnishing proof of filing to the Department. Upon receiving proof that Municipality has complied with Paragraphs I and XIII of this Contract, this Contract shall terminate in accordance with the terms of Paragraph XVI.A. This Contract shall then terminate upon the Department’s issuance of a Satisfactory Completion of Project letter.

ii. If Municipality elects to submit and implement an approvable Remedial Work Plan under this Subparagraph, it shall deliver to the Department an application to undertake an Environmental Restoration Program remediation project, as defined in the most recent version of the Department’s Procedures Handbook for Environmental Restoration Program Projects” available at the time of the application for State Assistance. If the application is approved, the Department shall notify Municipality in writing and the Remedial Work Plan shall be incorporated into and become an enforceable part of this Contract

I. 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 a Site Management Plan as a consequence of operation, maintenance, and monitoring requirements, including reliance upon institutional or engineering controls, Municipality shall file an annual report on the 1st day of the month following the anniversary of the start of the Site Management Plan and continuing until the Department notifies Municipality in writing that such annual report may be discontinued. Such annual 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 Site Management Plan. 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, 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 annual report required by this Subparagraph as well as in any progress reports required by Paragraph II.D.. 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.

III. Contemplated Use

The Municipality represents that the Site will be used for: _____
(the Contemplated Use), and 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.

IV. Enforcement and Force Majeure

This Contract 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 Contract 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 Contract. 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.

V. Entry upon Site

A. The Municipality hereby agrees to provide access to the Site and to all relevant information regarding activities that may have involved contaminants at the Site in accordance with the provisions of ECL 56-0515. Such access shall be for purposes of ensuring that the Site is

investigated and remediated in accordance with Department-approved plans, that any Site Management Plan 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. 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.

B. 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 Contract; such right of inspection shall survive termination of this Contract.

VI. State Assistance Amount

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

VII. Reimbursement of Costs

A. State Assistance shall be provided to the Municipality in accordance with Schedule B - "Payment Schedule", which is attached and made a part of this Contract and the Record Keeping and Payment Guide. All claims for reimbursement shall be accompanied by documentation which substantiates the eligibility of costs claimed to date, as required by the Department and the Office of the State Comptroller. The voucher must be signed by a duly authorized person.

B. If upon final audit of the Project by the Office of the State Comptroller, the Department determines that overpayment above the amount due has occurred, the Municipality shall make full repayment to the State of New York, through the Department and for deposit into

an appropriate account within sixty (60) days of notification of the Municipality by the State of such overpayment, or at such later date agreed upon by the parties, if the parties agree to a later date, and in accordance with the payment procedures, schedules and policies of the Municipality.

VIII. Disposition of Site

A. In the event that there is a Disposition of the Site or any portion of such Site, the amount of State Assistance shall be recalculated using the value of the Disposition of the Site. The Department has the option of either reducing the amount of the Contract if the project is ongoing or requesting reimbursement of the amount owed. The amount of money owed the State is the difference between the value of the disposition of the Site less the Municipality's cost of the Site including taxes owed to the Municipality upon acquisition and the Municipality's share of the cost of this Project up to the amount reimbursed by the State to the Municipality under this Contract. 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 Contract 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 the 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 Contract.

B. If the Municipality disposes of the Site by sale to a responsible party, the Municipality shall collect from such responsible party, in addition to such other consideration, an amount of money constituting the amount of State Assistance provided to the Municipality under this Contract plus accrued interest and transaction costs and the Municipality shall pay such funds immediately to the Department for deposit into an appropriate account.

IX. Force Account

The Municipality shall seek prior Department approval of any proposal to use the Municipality's employees to perform Project related activities. Municipal administrative costs associated with the Project are not eligible for reimbursement. The Department will not approve such proposals unless the Municipality can demonstrate that the Municipality's employees possess the necessary competence to perform the work in question and that the work can be more economically performed and done on a timely basis by the use of the Municipality's employees. The cost of any work performed by the Municipality's employees which has not received prior written Department approval shall be excluded from the Project's Eligible Cost used to calculate the State Assistance for the Project until such time, if ever, that the Department approves the use of such Municipality's employees. If written Department approval is given to use the

Municipality's employees for a specified task or activity, the Municipality shall maintain such records as the Department may require to document the costs of such use.

X. Cost Recovery

A. The State hereby reserves the right to seek to recover the full amount of any State Assistance provided under this Contract 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. 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 contaminants 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 Contract that identifies the Site's responsible parties and all other information acquired during the course of the Project's implementation.

C. The Municipality may make efforts to recover response 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 which were not included in the calculation of State Assistance pursuant to Paragraph VI of this Contract, the Municipality shall immediately notify the Department of such availability, the Department shall recalculate the amount of State Assistance. The Department has the option of either reducing the Contract amount if the project is ongoing or requesting reimbursement of the amount owed to the State, for deposit in an appropriate account. The State will calculate the amount owed by the Municipality based on the recalculated State assistance amount and the amount the State has reimbursed the Municipality as of the date the recalculation is made. If the Municipality shall fail to make such repayment within sixty (60) days of notification, the Department may take measures provided for by the law of the State of New York relating to the recovery of unrepaid State Assistance. The Municipality agrees that it will immediately notify the Department in writing of its receipt of reimbursement from other sources for any expenditure for which State Assistance may be provided under this Contract.

XI. Liability Protection

The Municipality shall be entitled to the liability protections set forth at ECL 56-0509, subject to the terms and conditions stated therein, upon receipt of a Satisfactory Completion of Project letter from the Department.

XII. 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 the Department determines that the proposed change of use is prohibited, the Department shall notify the Municipality of such determination within forty-five (45) days of receipt of such notice.

XIII. Environmental Easement

A. Within thirty (30) days after the Department's approval of a 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 II.H. that additional remediation is not needed based upon use restrictions, the Municipality shall submit to the Department for approval an Environmental Easement in a form provided by regulation of the Department to run with the land in favor of the State, along with a current title report prepared by a title company licensed to do business in New York State, title insurance, an adequate legal description of the Site and a current survey bearing the seal and signature of a licensed land surveyor. 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. Within thirty (30) days after the Department approves the Municipality's proposed Environmental Easement, the Municipality shall cause such instrument to be recorded with the recording officer for the county in which the Site is located. The Municipality 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.

B. The Municipality or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Contract 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. In the event that engineering and/or institutional controls are components of the remedy selected in the Department's Record of Decision pertaining to the Site, the Municipality will cause the development of a plan and submission to the Department for its review and approval 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 the Department-approved plan or to maintain such controls constitute a violation of this Contract and for the duration of such failure, ECL 56-0509.1 shall have no force and effect.

XIV. 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: that

1. the Site will not be used for any purpose until it is remediated, except that 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 Contract if the Department determines that the existing state of contamination is such as not to prohibit such use from continuing, giving due regard for human health and environmental protection;

2. if, before the Site's remediation is completed to the Department's satisfaction,

i. The Municipality wishes to subdivide the Site into separate parcels, it may do so after having submitted a document approved by the Department in form and substance for State Assistance to remediate the Site. However, a contaminated parcel of the subdivided Site cannot be used until the Department-determined remedial objectives for that parcel are met to the Department's satisfaction within such time period as the Department may require.

ii. The Municipality's successor in title that itself is not a municipality wishes to subdivide the Site into separate parcels, that successor in title must first agree to remediate all such parcels under Department oversight in accordance with the Department's Record of Decision and any such parcel cannot be used until such successor in title meets the parcel's Department-determined remedial objectives to the Department's satisfaction within such time period as the Department may require; and

iii. the Site will not be used for any purpose requiring a level of residual contamination lower than that serving as the basis for the remediation identified in the Department's Record of Decision pertaining to the Site.

XV. Communications

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

1. Communication from Municipality shall be sent to:

Project Manager

Section Chief or

Regional Hazardous Waste Remediation Engineer
Correspondence Only

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

Program Attorney
Correspondence only

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

Add Municipality contact(s)

B. The Department and 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.

XVI. Termination of Contract

A. If the Municipality complies with the requirements of applicable State and federal laws and regulations and with the terms of this Contract, the Department shall issue a Satisfactory Completion of Project letter. This Contract shall terminate when the Department issues this letter, and the parties agree that, upon termination, the Municipality, successor in title, lessees and lender shall be entitled to the liability limitation benefits set forth at ECL 56-0509, subject to the terms and conditions stated therein.

B. 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 Contract or if without good cause as determined by the Department, the Municipality has:

1. failed to proceed with the Project as scheduled and/or approved, or
2. changed the Project or any portion thereof without the Department's prior written approval,

the Department shall provide written notification to the Municipality of its breach of contract, setting forth in writing the basis for termination of the Contract and allowing the Municipality a reasonable and specific amount of time within which to cure its breach. Payments under this Contract shall be suspended until the Municipality has cured its breach. If the Municipality does not cure its breach of contract within the period of time allowed by the Department, this Contract shall terminate on the 5th day after the Municipality's receipt of another letter from the Department notifying the Municipality that the time to cure its breach of contract has passed ("Termination Letter"). The Department shall notify the Municipality of the amount of money that the Municipality owes the State for repayment of State Assistance provided under this Contract and for the Department's oversight costs and for any other costs incurred by the State in administering and terminating the Municipality's Environmental Restoration Program project ("Demand Letter"). The Municipality agrees that if this Contract is terminated by the Department under this Subparagraph B:

- i. 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 contract providing State Assistance under ECL Article 56,
- ii. the Department shall withhold all further State Assistance under this Contract, and
- iii. the Municipality shall make repayment of any State Assistance already paid under this Contract and other State costs, with interest thereon as provided by law, within 45 days of the Municipality's receipt of the Department's Demand Letter.

C. If this Contract is terminated, the following Paragraphs and Subparagraphs shall survive such termination: II(I), III, IV, V, VI, VII, VIII, X, XII, XIII, XIV, XV, and XVII(A).

XVII. Miscellaneous

A. If the information provided and any certifications made by the Municipality are not materially accurate and complete, this Contract, except with respect to the Municipality's obligations according to the provisions of the Paragraphs that the parties have expressly agreed will survive termination of this Contract, shall be null and void *ab initio* fifteen (15) days after the Department's notification of such inaccuracy or incompleteness, unless the Municipality 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 Contract is rendered null and void, any Satisfactory Completion of Project letter that may have been issued under this Contract shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

B. The Municipality 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 Contract, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; nothing in this Contract shall be construed to require the Municipality to allow the Department to attend portions of meetings where privileged matters are discussed.

C. The Municipality shall register all known petroleum storage tanks on the Site pursuant to 6 NYCRR 612.2, register all known chemical storage tanks on the Site pursuant to 6

NYCRR 596.2, and properly close all such known tanks, if out-of-service, pursuant to 6 NYCRR 613.9 (in the case of petroleum storage tanks) or 6 NYCRR 598.10 (in the case of chemical storage tanks) within the approved FI/RAA Work Plan schedule.

D. The Municipality shall remove and properly dispose of hazardous waste found to be stored on the Site in containment vessels other than known storage tanks (such as drums, transformers, sumps, and pits), or where petroleum storage tanks or chemical storage tanks are discovered on the Site during the course of the Project and such tanks contain hazardous waste, in accordance with all applicable State and federal requirements.

E. The Department may exempt the Municipality from the requirement to obtain any State or local permit or other authorization for any activity conducted pursuant to this Contract 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 contaminants from such Site, and (ii) satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit, as determined by the Department.

F. The Municipality 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 Municipality’s obligations under this Contract. If, despite the Municipality’s best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Contract are not obtained, the Municipality 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 the Municipality in obtaining access. If an interest in Site is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require the Municipality to modify the Work Plan pursuant to Subparagraph II.C of this Contract to reflect changes necessitated by the lack of access and/or approvals.

G. The Municipality shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Contract.

H. The Municipality shall provide a copy of this Contract to each subcontractor hired to perform work required by this Contract and shall condition all contracts entered into to carry out the obligations identified in this Contract upon performance in conformity with the terms of this Contract. The Municipality shall provide written notice of this Contract to all subcontractors hired to perform any portion of the work required by this Contract. Municipality shall nonetheless be responsible for ensuring that the Municipality’s subcontractors perform the work in satisfaction of the requirements of this Contract. The Municipality shall also insert in its contract with its consultant for the Project the clause for conflict of interest found in Appendix B.

I. The Municipality shall, before the start of any Approved Activity, require each consultant and subcontractor to secure and deliver to the Municipality a policy (or policies) of insurance issued by an insurance company licensed to do business in the State and acceptable to the State that shall name the Municipality and the State as additional insured. See Division of Environmental Remediation guidance, as may be amended, for descriptions of types of insurance required and their minimum limits. The Municipality shall provide the Department with a copy of

the applicable certificate(s) of insurance for its review prior to the commencement of the Project. The Municipality shall provide copies of the applicable insurance policies to the Department upon request.

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

K. 1. The terms of this Contract shall constitute the complete and entire Contract between the Department and the Municipality concerning the implementation of the activities required by this Contract. No term, condition, understanding, or agreement purporting to modify or vary any term of this Contract shall be binding unless made in writing and subscribed by both parties and approved by the State Comptroller. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving the Municipality of the Municipality's obligation to obtain such formal approvals as may be required by this Contract. In the event of a conflict between the terms of this Contract and any Work Plan submitted pursuant to this Contract, the terms of this Contract 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 Contract.

2. i. Except as set forth herein, if the Municipality desires that any provision of this Contract be changed, other than a provision of a Work Plan, the Municipality shall make timely written application to the parties listed in Subparagraph XV.A.1.

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

L. Unless otherwise expressly provided herein, terms used in this Contract which are defined in ECL Article 56 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

M. The Municipality's obligations under this Contract represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

N. All work performed in relation to the Project by the Municipality or its agents, representatives, or contractors shall conform to all applicable federal, State and local laws, ordinances, rules and regulations, and standards, including permit requirements. This Contract does not constitute a permit and does not confer upon the applicant the right to engage in the Contemplated Use or any other use of the Site for any particular purpose.

O. The Municipality shall ensure that any identifying signs will note that portions of the Project were assisted by the State under the Clean Water / Clean Air Bond Act of 1996.

P. All approved work plans, final reports shall be submitted to the Department in an electronic format acceptable to the Department within thirty (30) days of approval of such final report. In addition, the Department may require other site related documents to be submitted electronically. If any document cannot be converted into electronic format, the Municipality shall

so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

Q. No delay or omission on the part of either party in exercising any right under this Contract shall operate as a waiver of such right or of any other right under this Contract. A waiver on any occasion shall not be construed as a bar to or a waiver of any right and/or remedy on any other occasion. No waiver or consent shall be binding unless it is in writing and executed by the Department and the Municipality.

R. Appendix A - "Standard Clauses for All New York State Contracts"; Appendix B - "Standard Clauses for All New York State Department of Environmental Conservation Contracts"; Appendix C - "Legal Description of Site"; Schedule A - Scope of Work; Schedule B - "Payment Schedules"; and the "Glossary" are attached to and hereby made a part of this Contract as if set forth fully herein.

S. In the case of an application for State Assistance for an Environmental Restoration Program remediation project, the Municipality shall submit evidence of its compliance with the requirements of the State Environmental Quality Review Act ("SEQR").

T. This Contract 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.

U. The term of this Contract shall start *insert start date; see instructions*. This Contract shall end on *insert end date*. This Contract will be effective upon approval and filing by the State Comptroller in accordance with Section 112 of the State Finance Law. The Municipality agrees to proceed expeditiously with and to complete the Project in accordance with Work Plans approved by the Department, and any revisions thereto, and to carry out its other obligations under this Contract.

SITE NUMBER: _____ CONTRACT NUMBER: _____

NEW YORK STATE
ENVIRONMENTAL RESTORATION PROGRAM
STATE ASSISTANCE CONTRACT

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

FOR DEC

By: _____

Title: _____

Date: _____

FOR DOL

Approved as to form:

By: _____
for the Attorney General

Date: _____

FOR OSC

Approved:

Thomas P. DiNapoli
State Comptroller

By: _____

Date: _____

The contract is not effective until it is approved by the NYS Office of the State Comptroller and filed in his office (Section 112, State Finance Law).

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

APPENDIX C

Proof of Ownership

Enclosed and referenced as Appendix C are the following appropriate documents:

1. A deed indicating that the municipality holds title to the property. If a municipality obtains “temporary incidents of ownership”, the Order of the Court signed by the judge and showing a stamp that it has been filed will replace the deed.
2. A certification of ownership signed by the municipal attorney.
3. A title report prepared by a New York State licensed title company naming New York State as an insured party.
4. A survey of the property prepared by a licensed surveyor and a survey endorsement within the past 3 months, unless the survey is dated within the past year.
5. A metes and bounds description of the property (**NOTE: For investigation projects only**, if the municipality does not have a survey and/or metes and bounds description for the property, we can accept the tax identification number or section, block, and lot number in the County in which it is located in order to execute the SAC. However, in these cases, completing the survey and/or metes and bounds description must be a milestone in the investigation work plan. For all remediation projects, we must have a metes and bounds description and a recent survey in order to execute the SAC).

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

SCHEDULE A

Scope of Work

Municipality Name:

Site Name:

Site Address:

Site Number:

Contract Number: _____

GENERAL PURPOSE

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

(NOTE: Only include sections appropriate for each individual SAC)

GENERAL SCOPE

INVESTIGATION:

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

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

INVESTIGATION CALCULATION:

Note: If Schedule A is used for an amendment, use total contract (original plus amendments) amounts for the Total Eligible Cost and Total SAC Amount and subtract Executed SAC Amount to arrive at SAC Amendment Amount:

	On-site	Off-site	Demolition/Asbestos	Total
Total Eligible Cost:	\$ _____	\$ _____	\$ _____	\$ _____
Percentage:	90%	100%	50%	N/A
Total SAC Amount:	\$ _____	\$ _____	\$ _____	\$ _____
			Less: Executed SAC Amount:	\$ _____
			SAC Amendment Amount:	\$ _____

Note: Use the following Scope of Work for Remedial Design/Remedial Action:

REMEDIATION:

The Remedial Design/Remedial Action (RD/RA) will involve all tasks necessary to implement the remedy in accordance with the Department's Record of Decision (ROD). Specific tasks include: pre-design activities, as necessary, to address any uncertainties from the RI/AAR; preparation of a remedial design report; development of the statement of work, plans and specifications; contractor procurement; project scheduling; acquisition of appropriate bonding and insurance; acquisition of required permits; implementation of the remedial program; establishment of a Site Management Plan, as required; submittal of a construction completion report and as-built drawings; and public participation.

REMEDIATION CALCULATION:

Note: If Schedule A is used for an amendment, use total figures (Executed SAC plus amendment being processed) for the Total Eligible Cost and Total SAC Amount.

	On-site	Off-site	Demolition/Asbestos	Total
Total Eligible Cost:	\$ _____	\$ _____	\$ _____	\$ _____
Percentage:	90%	100%	50%	N/A
Total SAC Amount:	\$ _____	\$ _____	\$ _____	\$ _____

Note: If Schedule A is used for an amendment, subtract Executed SAC Amount to arrive at SAC Amendment Amount:

Less: Executed SAC Amount: \$ _____

SAC Amendment Amount: \$ _____

TOTAL INVESTIGATION AND REMEDIATION CALCULATION: (If Schedule A includes the investigation and remediation phase)

	On-site	Off-site	Demolition/Asbestos	Total
Total Eligible Cost:	\$ _____	\$ _____	\$ _____	\$ _____
Percentage:	90%	100%	50%	N/A
Total SAC Amount:	\$ _____	\$ _____	\$ _____	\$ _____

Note: If Schedule A is used for an amendment, subtract Executed SAC Amount to arrive at SAC Amendment Amount:

Less: Executed SAC Amount: \$ _____

SAC Amendment Amount: \$ _____

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

SCHEDULE B

Payment Schedule

Municipality Name:

Site Name:

Site Address:

Site Number:

Contract Number: _____

Requests for payments must be submitted in accordance with the Environmental Restoration Program Record Keeping and Payment Guide.

Request for payments must be submitted at least annually (once every 12 months), but no more frequently than quarterly (once every 3 months). Final payment must be submitted within 30 calendar days of the Certificate of Completion issuance date.

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

GLOSSARY

Except as expressly provided herein, terms used in this Contract have the same meanings as those set forth in ECL Article 56. In addition, the following terms shall have the meanings set forth below:

- (i) "Alternatives Analysis Report" is a report that contains an evaluation of options for the remediation of any contamination in, on, or under, or emanating from, the Site that includes an analysis of data and other information concerning the nature and extent of the Site's contamination and is generally performed concurrently, and in an interactive fashion, with the site investigation. An Alternatives Analysis Report is the Final Report submitted by a Municipality at the end of an Environmental Restoration Program investigation project.
- (ii) "Approved Activity" means any Investigation or Remediation activity which is part of the Project and has been approved in writing by the Department.
- (iii) "Contractor" in Appendices A and B means Municipality.
- (iv) "Disposition of the Site" means the leasing of the Site or the transfer of the Site's title through sale or other means.
- (v) "Eligible Cost" shall have the meaning given to that term in the Department's "Procedures Handbook for Environmental Restoration Program Projects" available at the time of this Contract.
- (vi) "Environmental Easement" shall mean an interest in the Site, created under and subject to the provisions of ECL Article 71, Title 36, which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls."
- (vii) "Force Majeure Event" is an event, in accordance with applicable case law, that includes but is not limited to war, strike, judicial injunction, or any other fact or circumstance beyond the Municipality's reasonable control.
- (viii) "Investigation" means a project consisting of a process undertaken to determine the nature and extent of contamination in, on, and under, and emanating from, the Site. The Site investigation includes the gathering of sufficient information to determine the necessity for, and the selection of the appropriate method of, remediation of contamination in, on, or under, or emanating from the Site. Additionally, it includes the associated Alternatives Analysis Report and any assistance Municipality must provide to the Department in the Department's selection of the Site's remedy. The term also includes any Department-approved interim remedial measures needed to undertake the Project or needed to eliminate any potential or actual releases of contaminants at, or from, the Site.

(ix) "Municipal Share" means any money provided under this Contract by the Municipality for its share of the Contract. The municipality may use any funding available (i.e. federal, State or other private party monies) except responsible party funding towards its share.

(x) "Parties" means the Department and Municipality.

(xi) "Project" means the Site's Investigation and/or Remediation as described in the Work Plan(s).

(xii) "Remediation" means a Project consisting of the design and implementation of the remedy selected in the Department's Record of Decision. While implementing the remedy may require a Site Management Plan, , the cost of complying with the plan would not be eligible for reimbursement under this contract.

(xiii) "Site" means the Site which is the subject of the Project. The Site's legal description appears as Appendix "C" to this Contract.

(xiv) "State Assistance" means State money provided under this Contract to Municipality pursuant to Article 56, Title 5 of the ECL.

(xv) "Work Plan" means a document which describes the purpose, scope, estimated cost, and progress schedule of the Project. The Work Plan must include a Public Participation Plan that, at a minimum, satisfies the requirements of ECL 56-0503.2.