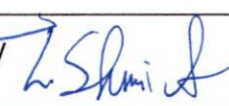



OGC Buckslip

Agreement for Temporary Use and Occupancy of Private Property: College Point Oil Lagoon, Site No. 241001

EDMS #	NAME	INITIALS	DATE
The attached is submitted for your signature by	A. Tamuno	AMT	3/1/24
It has been checked and approved by	M. Murphy 		3/7/24

Please return to: Cheryl Salem

Transmitted by: Cheryl Salem
Date: 03/07/2024

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel

220 White Plains Road, Suite 110, Tarrytown, NY 10591

P: (914) 803-8152 | F: (845) 255-3042

www.dec.ny.gov

MEMORANDUM

TO: David Harrington, Assistant Director, DER
FROM: Alali Tamuno THRU Leia Schmidt, Chief Section D, Bureau of Remediation
RE: College Point Oil Lagoon, Site No. 241001
ACCESS AGREEMENT
DATE: March 1, 2024

Attached for the DER Director's signature is an electronic copy of an *Agreement for Temporary Use and Occupancy of Private Property for Purpose Pursuant to ECL Sections 27-1309, 27-1313(8) and Other ECL Sections* for property that has a street address at 31-89 and 31-99 123rd Street, Flushing, New York (the "Agreement").

Differences Between the Final and Model Agreement: There are *significant* deviations from the DEC model Agreement. Other than a couple of minor updates to provide for Phase II LNAPL recovery pilot test activities; increasing the term of the Agreement to 36 months and a minor change in Paragraph 6 of the Agreement (manifest no. was replaced with EPA ID No.), the Agreement uses basically the same language in the fully executed Access Agreement for the Site dated October 30, 2020, which expired in October 2022. The fully executed October 2020 Access Agreement is attached as Exhibit "A".

Additional Issues: The Department is preparing to start work covered in the Access Agreement on Monday March 11, 2024. The DEC is considering the re-classification of the Site to a Class "2".

Recommendation: I recommend that the Department execute the Agreement.

ec (w/o attach.):

H. Dudek

M. Haggerty

E. Armater

C. Salem

Exhibit "A"

October 2020 Access Agreement

New York State Department of Environmental Conservation

**AGREEMENT for TEMPORARY USE AND OCCUPANCY of PRIVATE PROPERTY for
PURPOSE PURSUANT TO ECL SECTIONS 27-1309, 27-1313(8) AND OTHER
ECL SECTIONS**

This Agreement is between 123 Plaza LLC, a corporation with authority to do business in New York, with a mailing address at 47-15 33rd St., Long Island City, New York, 11101 hereinafter referred to as "OWNER," and the COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "the DEPARTMENT," pursuant to the above cited law,

WITNESSETH:

WHEREAS, the OWNER represents as follows:

- a. That the OWNER owns the real property referred to as the "the College Point Oil Lagoon Site" or "Property" or "Site" or some right, title or interest therein, which property has a street address at 31-89 and 31-99 123rd Street, Flushing, New York and shown on a map attached as Schedule "A" and being more particularly described within Appendix "A" attached hereto, and made a part hereof;
- b. That said ownership consists of the following interest in the Property: (e.g. fee title interest), title to which was acquired by the OWNER at the time and in the manner following:

By Deed dated February 14, 2008 and recorded in the Office of the City Register of the City of New York on March 12, 2008 at CRFN 2008000101874;
- c. That said Property is free and clear of all leases, tenancies, easements, contracts of sale, (except those leases listed on the attached Schedule B hereinafter referred as "TENANTS"):

WHEREAS, the DEPARTMENT is conducting a State-funded assessment of the College Point Oil Lagoon, Site No. 241001. The College Point Oil Lagoon Site is listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* with a Class "4" classification indicating that the College Point Oil Lagoon Site is properly closed-requires continued management.

WHEREAS, results of the (Phase I) LNAPL Recovery Pilot Test conducted at the Site in April 2022 indicate that the technologies assessed during the (Phase I) LNAPL Recovery Pilot Test are not appropriate for full-scale implementation at the Site. Accordingly, the Department has determined that a Phase II LNAPL recovery pilot test is warranted.

WHEREAS, said Property was, or will be, entered upon and occupied by the DEPARTMENT, its representatives, employees, agents or contractors (its "Agents"), for the performance of work thereon for one or more of the purposes set forth in Environmental Conservation Law (ECL) Sections 27-1309(3)-(4) and 27-1313(8), and particularly for the purpose of assessing the status of testing, monitoring or remedial actions conducted at the College Point Oil Lagoon Site.

WHEREAS, on October 30, 2020, the DEPARTMENT and OWNER entered into the Agreement for Temporary Use and Occupancy of Private Property for Purpose Pursuant to ECL Sections 27-1309, 27-1313(8) and Other ECL Sections, including to conduct a supplemental investigation, passive LNAPL recovery and pilot testing to determine if active NAPL recovery is feasible ("2020 Access Agreement").

WHEREAS, pursuant to the 2020 Access Agreement, the DEPARTMENT and/or its Agents entered the Site and conducted a (Phase I) LNAPL recovery pilot test between April 18, 2022 through April 29, 2022.

WHEREAS, the 2020 Access Agreement has expired.

NOW THEREFORE, the Parties hereto agree as follows:

1. This Agreement is to facilitate the entry of the DEPARTMENT and its Agents onto the Property to conduct certain Site investigation and limited waste removal activities set forth herein as authorized by the New York State ECL. It shall not convey any interest in the Property to the State of New York.
2. A minimum 72 hours notification will be given to the OWNER prior to entry for any of the activities contemplated herein and listed below. For purposes of the notification and consultation requirements in this Agreement and transmission of work plans and associated Health and Safety Plan for the work specified in Paragraph 4 of this Agreement, the DEPARTMENT shall contact Danny Hahm at danny.hahm@bcsroyal.com (Tel No.: 631-355-1693) and Eric Nemeth, Esq. at enemeth@ejcounsel.com (Tel No. 201.522-3362).
3. The OWNER will permit entry on and use of the Property by the DEPARTMENT and its Agents commencing from the effective date (as hereinafter defined) of this Agreement for a period not to exceed thirty-six (36) months, unless such time period is extended by agreement by the DEPARTMENT and the OWNER (the "Parties") in writing (the "Term") to perform the activities listed below (collectively referred to herein as the "Site Work"). Such right of entry includes the right and/or requirement to:
 - operate a work area;
 - undertake the activities contemplated pursuant to a Phase II LNAPL Recovery Pilot Test Work Plan for the Site, as same may be amended by the DEPARTMENT after consultation with the OWNER;
 - remove from the Property any material generated from the DEPARTMENT's work activities;
 - place fencing or traffic cones to secure work area;
 - collect air, soil vapor, water or soil samples for analysis;
 - remove from the Property air, water or soil samples;
 - Install recovery and associated monitoring/injection wells necessary to conduct a Phase II LNAPL Recovery pilot test;

- conduct a Phase II LNAPL Recovery pilot test to determine if multi-phase extraction and surfactant-enhanced multi-phase extraction is feasible. Pilot testing would not include any modifications to the property and could be completed in four weeks. The DEPARTMENT will provide the pilot test work plan beforehand and summarize the results in a report. Based on the results, the DEPARTMENT may propose a NAPL recovery system as an Interim Corrective Measure. Such NAPL recovery system would require permanent space and power for which a subsequent access agreement would be necessary;
- passive LNAPL recovery, as appropriate;
- restore the Site to its condition prior to conduct of the work contemplated herein; and
- carry on any activity necessary for the completion of the Site Work in a manner protective of public health and the environment, together with the rights at all times during the duration of this agreement of ingress, egress and regress by the State of New York, its employees, agents, contractors and/or representatives for the purposes connected with the above work.

4. At a minimum of twenty-one (21) days prior to the entry on and use of the Property for the Purposes described herein, the DEPARTMENT will provide the OWNER with the work plans (“Work Plans”) and associated health and safety plan for the work to be performed on the Property. The DEPARTMENT will make every reasonable effort to address all of the OWNER’s concerns related to Work Plans to the extent same reflect issues related to avoidance of interference with the occupancy and use of the Site by OWNER and its TENANTS.

5. Subject to the availability of lawful appropriations, and as provided by New York State’s Court Of Claims Act and Section 17 of the New York State Public Officers Law, the DEPARTMENT hereby agrees to indemnify and hold harmless the OWNER for any and all causes of action in law or equity, arising directly from the DEPARTMENT, its employees, agents, consultants, contractors and subcontractors, use and access of the Property.

The duty to indemnify and hold harmless shall be conditioned upon delivery to the Attorney General by the OWNER of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days of receipt.

The DEPARTMENT, for and on behalf of its employees, agents, consultants, contractors and subcontractors, hereby releases the OWNER from any liability directly arising from the use and access of the Property by its employees, agents, consultants, contractors and subcontractors. OWNER hereby acknowledges that this indemnification, hold harmless and release agreement is given in consideration of allowing the DEPARTMENT to use the Property on the stated dates, for the stated purpose(s) and that the consideration is fair and adequate.

6. The DEPARTMENT shall work cooperatively with the OWNER and shall ensure that the Site Work contemplated under Paragraph 3 of this Agreement is conducted in a manner that does not interfere with the occupancy and use of the Property by the TENANTS and the OWNER’s business, including but not limited to loss of use of warehouse and/or office spaces,

external parking spaces and access to loading docks.

At least ten (10) business days before accessing the Site to begin the work specified in Paragraph 3 of this Agreement, the DEPARTMENT will consult with the OWNER's representative regarding the location(s) for installation of wells, borings and/or vapor probes; however these well borings and vapor points must be installed in locations that meet the technical requirements for the work specified in Paragraph 3 of this Agreement and further notice to the OWNER is not required as long as the wells, borings and vapor points are placed in the general location(s) discussed with the OWNER's representative(s). The DEPARTMENT will make every reasonable effort to address the OWNER's concerns related to the work specified in Paragraph 3 of this Agreement. During each day of work at the Property for the activities specified in Paragraph 3, the DEPARTMENT will ensure that the work areas are secure and free of property hazards. All waste material, including but not limited to any hazardous waste encountered or generated in the implementation of the Work Plans shall be removed from the Property in accordance with applicable law in a timely manner by the DEPARTMENT under EPA ID. No. NYR000236810 duly signed by the DEPARTMENT or its representatives. The Owner shall not be responsible for signing any part of any waste manifests including those designated under EPA ID No. NYR000236810.

7. The OWNER may elect to obtain split/duplicate samples. The OWNER shall inform the representatives of the DEPARTMENT of its election prior to the start of any sampling event and shall provide the sample containers required by the laboratory that will analyze the samples on behalf of the OWNER.

8. Prior to the termination of this Agreement, the DEPARTMENT, at its cost and expense, will restore the Property to its former condition, restoring blacktop/concrete and/or reseeding and revegetating, if needed, but not including replacement of large trees.

9. The DEPARTMENT's obligations to obtain permits for work at the Site is as set forth in 6 NYCRR Section 375-1.12.

10. Consistent with New York State contracting requirements, the DEPARTMENT's contractor has comprehensive general liability, business automobile liability, statutory workers compensation and employers' liability insurance and umbrella or excess liability policy as set forth in Article 28 of the DEPARTMENT's Division of Environmental remediation Standby Engineering Services Contract with EA Engineering, PC (Contract No. D009806), which insurance requirements are attached herein as Schedule C. The DEPARTMENT will require that the OWNER and TENANTS be added as additional insureds and that a certificate of insurance showing the insurance is in full force and effect be provided to the OWNER prior to the start of the Site Work and that not less than thirty (30) days notice will be given to the OWNER prior to date of cancellation. The DEPARTMENT will cooperate with OWNER in pursuing with the insurer any claim that may arise. To the extent that subcontractors are utilized for the purposes described herein, each subcontractor that performs activities at or on the Property shall be required to obtain insurance.

11. The DEPARTMENT shall provide the OWNER with copies of the sampling data, test results and final reports of the work done at the Site in accordance with applicable state law.

12. The DEPARTMENT covenants that all work to be performed hereunder will be done at no cost or expense to the OWNER; provided, however, this does not constitute a waiver of any


rights the DEPARTMENT may have to recover such cost from any responsible party, pursuant to relevant provisions of statutory or common law. Except to the extent provided in this Agreement, nothing herein precludes the OWNER from seeking, or limits the OWNER'S right to pursue remedies against any person responsible for losses or damages suffered by the OWNER and/or its tenants.

13. The effective date of this Agreement is the date it is signed by the DEPARTMENT's Director, Division of Environmental Remediation (the "DER Director") or the DER Director's designee.

14. This Agreement shall inure to the benefit of and bind the distributees, legal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the date indicated opposite each signature.

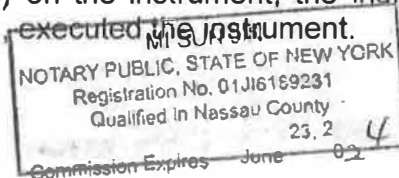
Dated: 3/1/2024


OWNER

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 1st day of March, in the year 2024, before me, the undersigned, personally appeared Dae Hyun Yoo, 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.


Signature and Office of individual taking acknowledgment



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Dated: 3/7/2024

By: Dave Harrington
David Harrington, P.E.
Assistant Director
Division of Environmental Remediation

New York State Department of Environmental Conservation

AGREEMENT for TEMPORARY USE AND OCCUPANCY of PRIVATE PROPERTY for PURPOSE PURSUANT TO ECL SECTIONS 27-1309, 27-1313(8) AND OTHER ECL SECTIONS

This Agreement is between 123 Plaza LLC, a corporation with authority to do business in New York, with a mailing address at 47-15 33rd St., Long Island City, New York, 11101 hereinafter referred to as "OWNER," and the COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "the DEPARTMENT," pursuant to the above cited law,

WITNESSETH:

WHEREAS, the OWNER represents as follows:

- a. That the OWNER owns the real property referred to as the "the College Point Oil Lagoon Site" or "Property" or "Site" or some right, title or interest therein, which property has a street address at 31-89 and 31-99 123rd Street, Flushing, New York and shown on a map attached as Schedule "A" and being more particularly described within Appendix "A" attached hereto, and made a part hereof;
- b. That said ownership consists of the following interest in the Property: (e.g. fee title interest), title to which was acquired by the OWNER at the time and in the manner following:

By Deed dated February 14, 2008 and recorded in the Office of the City Register of the City of New York on March 12, 2008 at CRFN 2008000101874;
- c. That said Property is free and clear of all leases, tenancies, easements, contracts of sale, (except those leases listed on the attached Schedule B hereinafter referred as "TENANTS"):

WHEREAS, the DEPARTMENT is conducting a State-funded assessment of the College Point Oil Lagoon, Site No. 241001. The College Point Oil Lagoon Site is listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* with a Class "4" classification indicating that the College Point Oil Lagoon Site is properly closed-requires continued management.

WHEREAS, said Property was, or will be, entered upon and occupied by the DEPARTMENT, its representatives, employees, agents or contractors (its "Agents"), for the performance of work thereon for one or more of the purposes set forth in Environmental Conservation Law (ECL) Sections 27-1309(3)-(4) and 27-1313(8), and particularly for the purpose of assessing the status of testing, monitoring or remedial actions conducted at the College Point Oil Lagoon Site.

WHEREAS, on November 13, 2017, the DEPARTMENT and OWNER entered into the Agreement for Temporary Use and Occupancy of Private Property for Purpose Pursuant to

ECL Sections 27-1309, 27-1313(8) and Other ECL Sections ("Prior Access Agreement").

WHEREAS, pursuant to the Access Agreement dated November 13, 2017, the DEPARTMENT and/or its Agents entered the Site and conducted a subsurface soil investigation between June 4, 2018 through June 13, 2018.

WHEREAS, the Prior Access Agreement has now expired.

NOW THEREFORE, the Parties hereto agree as follows:

1. This Agreement is to facilitate the entry of the DEPARTMENT and its Agents onto the Property to conduct certain site investigation and limited waste removal activities set forth herein as authorized by the New York State ECL. It shall not convey any interest in the Property to the State of New York.

2. A minimum 72 hours notification will be given to the OWNER prior to entry for any of the activities contemplated herein and listed below. For purposes of the notification and consultation requirements in this Agreement and transmission of work plans and associated Health and Safety Plan for the work specified in Paragraph 3 of this Agreement, the DEPARTMENT shall contact Danny Hahm at danny.hahm@bcsroyal.com (Tel No.: 631-355-1693) and Eric Nemeth, Esq. at enemeth@ejcounsel.com (Tel No. 201.522-3362).

3. The OWNER will permit entry on and use of the Property by the DEPARTMENT and its Agents commencing from the effective date (as hereinafter defined) of this Agreement for a period not to exceed twenty-four (24) months, unless such time period is extended by agreement by the DEPARTMENT and the OWNER (the "Parties") in writing (the "Term") to perform the activities listed below (collectively referred to herein as the "Site Work"). Such right of entry includes the right and/or requirement to:

- operate a work area;
- undertake the activities contemplated pursuant to the "Final Supplemental Field Investigation Work Plan" dated January 23, 2020 for the Site, as same may be amended by the DEPARTMENT after consultation with the OWNER;
- remove from the Property any material generated from the DEPARTMENT's work activities;
- place fencing or traffic cones to secure work area;
- collect air, soil vapor, water or soil samples for analysis;
- remove from the Property air, water or soil samples;
- conduct passive LNAPL recovery and pilot testing to determine if active NAPL recovery is feasible. Pilot testing would not include any modifications to the property and could be completed in a several days. The DEPARTMENT will provide the pilot test work plan beforehand and



summarize the results in a report. Based on the results, the DEPARTMENT may propose a NAPL recovery system as an Interim Corrective Measure. Such NAPL recovery system would require permanent space and power for which a subsequent access agreement would be necessary;

— restore the site to its condition prior to conduct of the work contemplated herein; and

— carry on any activity necessary for the completion of the Site Work in a manner protective of public health and the environment, together with the rights at all times during the duration of this agreement of ingress, egress and regress by the State of New York, its employees, agents, contractors and/or representatives for the purposes connected with the above work.

4. At a minimum of twenty-one (21) days prior to the entry on and use of the Property for the Purposes described herein, the DEPARTMENT will provide the OWNER with the work plans ("Work Plans") and associated health and safety plan for the work to be performed on the Property. The DEPARTMENT will make every reasonable effort to address all of the OWNER's concerns related to Work Plans to the extent same reflect issues related to avoidance of interference with the occupancy and use of the Site by OWNER and its TENANTS.

5. Subject to the availability of lawful appropriations, and as provided by New York State's Court Of Claims Act and Section 17 of the New York State Public Officers Law, the DEPARTMENT hereby agrees to indemnify and hold harmless the OWNER for any and all causes of action in law or equity, arising directly from the DEPARTMENT, its employees, agents, consultants, contractors and subcontractors, use and access of the Property.

The duty to indemnify and hold harmless shall be conditioned upon delivery to the Attorney General by the OWNER of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days of receipt.

The DEPARTMENT, for and on behalf of its employees, agents, consultants, contractors and subcontractors, hereby releases the OWNER from any liability directly arising from the use and access of the Property by its employees, agents, consultants, contractors and subcontractors. OWNER hereby acknowledges that this indemnification, hold harmless and release agreement is given in consideration of allowing the DEPARTMENT to use the Property on the stated dates, for the stated purpose(s) and that the consideration is fair and adequate.

6. The DEPARTMENT shall work cooperatively with the OWNER and shall ensure that the Site Work contemplated under Paragraph 3 of this Agreement is conducted in a manner that does not interfere with the occupancy and use of the Property by the TENANTS and the OWNER's business, including but not limited to loss of use of warehouse and/or office spaces, external parking spaces and access to loading docks.

At least ten (10) business days before accessing the Site to begin the work specified in

Paragraph 3 of this Agreement, the DEPARTMENT will consult with the OWNER's representative regarding the location(s) for installation of wells, borings and/or vapor probes; however these well borings and vapor points must be installed in locations that meet the technical requirements for the work specified in Paragraph 3 of this Agreement and further notice to the OWNER is not required as long as the wells, borings and vapor points are placed in the general location(s) discussed with the OWNER's representative(s). The DEPARTMENT will make every reasonable effort to address the OWNER's concerns related to the work specified in Paragraph 3 of this Agreement. During each day of work at the Property for the activities specified in Paragraph 3, the DEPARTMENT will ensure that the work areas are secure and free of property hazards. All waste material, including but not limited to any hazardous waste encountered or generated in the implementation of the Work Plans shall be removed from the Property in accordance with applicable law in a timely manner by the DEPARTMENT on Manifest No. NYR000236810 duly signed by the DEPARTMENT or its representatives. The Owner shall not be responsible for signing any part of any waste manifests including those designated as Manifest No. NYR000236810.

7. The OWNER may elect to obtain split/duplicate samples. The OWNER shall inform the representatives of the DEPARTMENT of its election prior to the start of any sampling event and shall provide the sample containers required by the laboratory that will analyze the samples on behalf of the OWNER.

8. Prior to the termination of this Agreement, the DEPARTMENT, at its cost and expense, will restore the Property to its former condition, restoring blacktop/concrete and/or reseeding and revegetating, if needed, but not including replacement of large trees.

9. The DEPARTMENT's obligations to obtain permits for work at the Site is as set forth in 6 NYCRR Section 375-1.12.

10. Consistent with New York State contracting requirements, the DEPARTMENT's contractor has comprehensive general liability, business automobile liability, statutory workers compensation and employers' liability insurance and umbrella or excess liability policy as set forth in Article 28 of the DEPARTMENT's Division of Environmental remediation Standby Engineering Services Contract with EA Engineering, PC (Contract No. D009806), which insurance requirements are attached herein as Schedule C. The DEPARTMENT will require that the OWNER and TENANTS be added as additional insureds and that a certificate of insurance showing the insurance is in full force and effect be provided to the OWNER prior to the start of the Site Work and that not less than thirty (30) days notice will be given to the OWNER prior to date of cancellation. The DEPARTMENT will cooperate with OWNER in pursuing with the insurer any claim that may arise. To the extent that subcontractors are utilized for the purposes described herein, each subcontractor that performs activities at or on the Property shall be required to obtain insurance.

11. The DEPARTMENT shall provide the OWNER with copies of the sampling data, test results and final reports of the work done at the Site in accordance with applicable state law.

12. The DEPARTMENT covenants that all work to be performed hereunder will be done at no cost or expense to the OWNER; provided, however, this does not constitute a waiver of any rights the DEPARTMENT may have to recover such cost from any responsible party, pursuant to relevant provisions of statutory or common law. Except to the extent provided in


this Agreement, nothing herein precludes the OWNER from seeking, or limits the OWNER'S right to pursue remedies against any person responsible for losses or damages suffered by the OWNER and/or its tenants.

13. The effective date of this Agreement is the date it is signed by the DEPARTMENT'S Director, Division of Environmental Remediation (the "DER Director") or the DER Director's designee.

14. This Agreement shall inure to the benefit of and bind the distributees, legal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the date indicated opposite each signature.

Dated: 9/15/20


OWNER

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 15th day of September, in the year 2020, before me, the undersigned, personally appeared Dae Hyun Yoo, 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.


Signature and Office of individual taking acknowledgment

MI SUN JIN
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01JI6189231
Qualified in Nassau County
Commission Expires June 23, 2024

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Dated: October 30, 2020

By: 
Michael Ryan, P.E.
Director
Division of Environmental Remediation

Schedule "A"
Map

NYSDEC Site No. 241001
College Point Oil Lagoon



Schedule B
List of leases and tenancies

- 1. Varsity Plumbing & Heating, Inc.**
- 2. The City of New York**

**Schedule C
Insurance
Requirements**



**Department of
Environmental
Conservation**

Division of Environmental Remediation Standby Engineering Services Contract

Contract Number: D009806

Consultant: EA Engineering, P.C.
Address: 269 West Jefferson Street
Syracuse, NY 13202

Phone Number: 315-431-4610

Division of Environmental Remediation
625 Broadway, Albany, NY 12233-7012
P: (518) 402-9764 | F: (518) 402-9722 | der.contracts@dec.ny.gov

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Appendix C – Standard Clauses for Ethics in All NYSDEC Contracts	
Appendix D – New York State Department of Environmental Conservation Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence	
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**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CONSULTANT CONTRACT
CONTRACT NO. D009806**

THIS CONTRACT, entered into between the New York State Department of Environmental Conservation (hereinafter referred to as the Department), having offices at 625 Broadway, Albany, NY 12233 and **EA Engineering, P.C.** (hereinafter referred to as Consultant), having offices at **269 West Jefferson Street, Syracuse, NY 13202**.

WITNESSETH:

WHEREAS, the Department requires certain professional services for managing Site Characterizations (SC), Remedial Investigations/Feasibility Studies (RI/FS), Detailed Design of Comprehensive Remedial Designs (RD), Professional Oversight of Remedial Actions/Construction (RA), Analytical Quality Assurance/Quality Control Activities (QA/QC), Site Response Activities/Interim Remedial Measures (IRM), Site Management (SM), Citizen Participation Activities (CP), Health and Safety Plan (HASP) Development and/or Review, Potential Responsible Party (PRP) and Third Party Oversight/Search Activities, Soil Vapor Intrusion (SVI) Investigations, Environmental Monitoring, Oil Spill Prevention, and other remedial activities including, but not limited to investigation, remediation, monitoring, and oversight of projects undertaken by Potentially Responsible Parties as set forth in the SEP; and,

WHEREAS, the Department is authorized through the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 and through applicable provisions of Environmental Conservation Law (ECL), Section 3-309, authorizing the procurement of Standby Engineering Consultants, and through Sections §§170 and 177 in Article 13 of the Navigation Law for investigation, remediation, and response to petroleum spills; and,

WHEREAS, the performance of these services is essential to the Department; and

WHEREAS, after fully examining all its internal capabilities and thoroughly investigating possible alternative approaches, the Department has determined that these services can best be accomplished through a contract.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

General Contract Terms

Article 1 – Terms and Definitions

Wherever used in the Contract, the following terms (or pronouns in place of terms) have the meanings indicated which are applicable to both the singular and the plural thereof:

Attorney General – The New York State Office of the Attorney General (OAG).

Commissioner – The Commissioner of the New York State Department of Environmental Conservation.

Comptroller – The Comptroller of the New York State Office of the State Comptroller (OSC).

Consultant – The person, firm, partnership, corporation, or other combination thereof, who has entered a Contract with the Department to provide professional services. The term “Consultant” means the Consultant or his or her authorized representative.

Contaminants – Petroleum, hazardous waste, hazardous substances and/or suspected hazardous substances that have been released into environmental media (air, soil, water).

Contract Amendment – A written legal document signed by the Consultant and the Department and approved by the Comptroller authorizing an addition, deletion, or revision in the contract language which could include a change of scope of work, Contract Value, Contract Term, or any combination thereof, issued on or after the effective date of the Contract.

Contract Documents – The written legal document between the Department and Consultant covering the services to be performed and other documents (i.e., appendices, schedules) that are attached to the Contract and made a part thereof as provided therein.

Contract Manager – The Department or Consultant employee responsible for the administration of the Contract.

Contract Term – The period of time indicated in the Contract during which the Consultant and the Department will be bound by the terms and conditions of the Contract.

Contractor – The person, firm, partnership, corporation, or other combination thereof, who has entered a contract with the Department for non-professional services to be provided. A Contractor may work independently from the Consultant.

Contractor's Application for Payment (CAP) – The form furnished by the Department on which the Consultant must request payment, and which is to include such supporting documentation as is required by the Contract.

Day – A calendar day of 24 hours lasting from midnight one day to midnight the next day.

Department – The New York State Department of Environmental Conservation (DEC).

Effective Date of the Contract – The date on which the Contract is approved and signed by the Comptroller.

Emergency – An urgent and unexpected requirement where public health and public safety or the conservation of public resources are at risk.

Employee – Any person working on a Work Assignment mentioned in the Contract of which these specifications are a part, and who is under the direction or control of, or received compensation from, the Consultant.

Environmental Media – Defined as, but not limited to, soil, groundwater, surface water, drinking water, soil vapor, air, and sediments.

Equipment – All machinery, equipment, tools, and apparatus together with the necessary supplies for upkeep and maintenance necessary for the proper and acceptable completion of the work.

Firm – The name or title under which an entity transacts business.

Hazardous Substance -- Shall have the same meaning as hazardous substance as defined in 6 NYCRR Part 597.

Hazardous Waste -- Shall have the same meaning as hazardous waste as defined in 6 NYCRR Part 371.

Law(s) -- Applicable laws, rules, regulations, ordinances, codes, or orders of a federal or New York State court.

Material -- When the term is used as a noun, any approved substance acceptable to the Department and conforming to the requirements of the specifications.

Project Manager -- The Department or Consultant employee responsible for the administration of work.

Proposal -- The Documents submitted by a Proposer in response to the Standby Engineering Procurement (SEP).

Proposer -- The person, firm, partnership, corporation, or other combination thereof submitting a technical Proposal in response to the SEP.

Response -- Any action taken to address a situation which requires time-critical action to ensure that a release or potential release of contaminants (i.e., petroleum, hazardous waste, hazardous substance) does not threaten the immediate public health or the environment.

Site -- Any real property consisting of a parcel, adjacent properties or parcels, or portions of properties or parcels, identified as: a property being addressed under the inactive hazardous waste disposal site program (State Superfund/SSF); a brownfield site; an environmental restoration project, as defined by the state assistance contract; a voluntary cleanup site; a petroleum remediation project; or other projects identified pursuant to other approved remedial programs implemented or overseen by the Department where the Work Assignment requires work by the Consultant.

Subcontractor -- An individual, partnership, corporation, or other combination thereof, having a direct contract with the Consultant or with any other subcontractor for the performance of part of the work at the site.

Work -- All services, obligations, tasks, responsibilities, personnel, materials, equipment, temporary facilities, incidentals, and the furnishing thereof necessary to perform the services required to complete the Work Assignment.

Work Assignment (WA) -- The authorization as assigned by the Department to the Consultant for the completion of a specific scope of work.

address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected status under the Human Rights Law.

Article 26 – Standard Contract Clauses

The Consultant will be required to comply with all mandatory New York State and Department contracting provisions contained in the following three (3) attached documents:

- Appendix A – Standard Clauses for All New York State Contracts
- Appendix B – Standard Clauses for All NYSDEC Contracts
- Appendix C – Standard Clauses for Ethics in All NYSDEC Contracts

Article 27 – MacBride Fair Employment Principles/Non-Collusion Requirements/State Ethics Law/Procurement Lobbying Law Provisions

The Consultant is required to complete the combined “Non-Collusion/Nondiscrimination in Employment in Employment in Northern Ireland: MacBride Fair Employment Principles/State Ethics Law/Procurement Lobbying Law Provision” form.

Article 28 – Insurance Requirements

- 28.1 The Consultant agrees to procure and maintain at its own expense and without expense to the Department insurance of the kinds and amounts hereinafter provided by insurance companies licensed to do business in the State of New York, covering all operations under this Contract.
 - 28.1.1 The Consultant shall furnish to the Department a certificate or certificates with the appropriate endorsements showing that it has complied with this Article. The insurance documentation shall provide that:
 - 28.1.2 Liability and protective liability insurance policies shall provide primary and noncontributory coverage to the NYS Department of Environmental Conservation for any claims arising from the Consultant’s Work under this contract, or as a result of the Consultant’s activities.
 - 28.1.3 The State of New York, NYS Department of Environmental Conservation, its officers, agents and employees, Division of Environmental Remediation, 625 Broadway, Albany, NY 12233-7017, shall be listed as Certificate Holder on all liability insurance certificate(s), as additional insureds on endorsement(s) and on additional supporting documentation.
 - 28.1.4 The policies shall include a waiver of subrogation endorsement in favor of the Department as an additional insured. The endorsement shall be on ISO Form number CG 24 04 or a similar form with same modification to the policy.

- 28.1.5 Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department; as evidenced by an endorsement or declarations page.
- 28.1.6 Insurance documentation shall disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.
- 28.1.7 Endorsements in writing must be added to and made part of the insurance contract for the purpose of changing the original terms to reflect the revisions and additions as described. A copy of these endorsements must be provided to the Department.
- 28.1.8 Applicable insurance policy number(s) referenced on the ACORD form must be referenced in the supporting documentation requested by the Department and supplied by the insurance company (e.g., endorsement page, declarations page, etc.).
- 28.1.9 When coverage is provided by a non-admitted carrier, a copy of the declarations page along with the ELANY stamped certification wording affixed to the certificate of insurance must be provided to ensure that the excess line insurance has met all of the requirements for a valid excess line transaction in accordance with Article 21 of the New York State Insurance Law.
- 28.1.10 Workers' Compensation and Disability Benefits certificates shall name the New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, Albany, NY 12233-7017, as entity requesting proof of coverage.
- 28.1.11 This Contract shall be void and of no effect unless the Consultant procures the required insurance policies and maintains them until acceptance or completion of the work, whichever event is later. If at any time during the term of this contract the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the Department, the Consultant shall immediately cease Work on the Project. The Consultant shall not resume Work on the Project until authorized to do so by the Department. Any delay, time lost, or additional cost incurred as a result of the Consultant not having insurance required by the Contract or not providing proof of same in a form acceptable to the Department, shall not give rise to a delay claim or any other claim against the Department. Should the Consultant fail to provide or maintain any insurance required by this contract, or proof thereof is not provided to the Department, the Department may withhold further contract payments, treat such failure as a breach or default of this contract, and/or, after providing written notice to the Consultant, require the Surety "if any" to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Consultant.
- 28.1.12 Should the Consultant engage a subcontractor, the Consultant shall determine the required insurance types and limits, commensurate with the work of the Subcontractor. The

Consultant will maintain the certificate or certificates and endorsements for all subcontractors hired as part of the Consultant's records.

28.2 The following types and amounts of insurance are required for this Contract:

28.2.1 Workers' Compensation - For work to be performed in New York State, the Consultant shall provide and maintain full New York State coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
C105.2	Certificate of Workers' Compensation Insurance (September 2007, or most current version)
U-26.3	State Insurance Fund Version of the C-105.2 Form
SI-12/GSI-105.2	Certificate of Workers' Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Consultant meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

*Please note that ACORD forms are **NOT** acceptable proof of New York State Workers' Compensation Insurance coverage.*

Additional information can be obtained at the Workers' Compensation website: <http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

28.2.2 Disability Benefits - For work to be performed in New York State, the Consultant shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Department of Environmental Conservation and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	FORM TITLE
DB-120.1	Certificate of Insurance Coverage under the New York State Disability Benefits Law
DB-155	Certificate of Disability Self-Insurance
CE-200	Certificate of Attestation of Exemption (when Consultant meets the requirements.)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

Please note that ACORD forms are NOT acceptable proof of New York State Disability Benefits Insurance coverage.

Additional information can be obtained at the Workers' Compensation website:
<http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>

28.2.3 Commercial General Liability Insurance - Consultant shall provide and maintain Commercial General Liability Insurance (CGL) covering the liability of the Consultant for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit – \$5,000,000
- General Aggregate – \$8,000,000
- Products/Completed Operations – \$8,000,000
- Personal & Advertising Injury - \$1,000,000
- Damage to Rented Premises - \$50,000
- Medical Expense - \$5,000

Coverage shall include, but not be limited to, the following:

- Premises liability
- Independent contractors
- Blanket contractual liability, including tort liability of another assumed in a contract
- Defense and/or indemnification obligations, including obligations assumed under this Contract
- Cross liability for additional insureds
- Products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

28.2.4 Business Automobile Liability - Consultant shall provide and maintain Business Automobile Liability insurance covering liability arising out of the use of any registered motor vehicle in connection with the contract, including owned, leased, hired and non-owned vehicles. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$1,000,000.

If the Consultant does not own, lease or hire any registered motor vehicles or will not be using any vehicles on State Land proof of Business Automobile Liability Insurance shall

not be required for this Contract. However, Consultant is required to execute Business Automobile Liability Insurance Attestation.

The Consultant shall assume full responsibility and liability that owners and operators of any registered motor vehicles entering State Land to conduct work under this contract carry the same Business Automobile Liability Insurance of the kinds and amounts listed above. NYS Department of Environmental Conservation reserves the right to request proof of the same.

28.2.5 Professional Liability - The Consultant shall procure and maintain during and for a period of three (3) years after completion of this contract, Professional Liability Insurance in the amount of \$5,000,000 issued to and covering damage for liability imposed on the Consultant by this contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this contract. The professional liability insurance may be issued on a claims-made policy form, in which case the Consultant shall purchase at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed. The Consultant shall provide coverage for its negligent act, error or omission in rendering or failing to render professional services required by this contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants.

Should any subcontractor(s) or supplier(s) retained by the Consultant provide professional services requiring design (i.e. the signature, stamp or certification of a licensed professional), the Consultant shall collect Professional Liability Insurance from the subcontractor(s) or supplier(s) and retain said insurance as part of the contract documents.

28.2.6 Umbrella and Excess Liability - When the limits of the CGL, Auto, and/or Employers' Liability policies procured are insufficient to meet the limits specified, the Consultant shall procure and maintain Commercial Umbrella and/or Excess Liability policies with limits in excess of the primary; provided, however, that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall follow the same form as the primary.

28.2.7 The Consultant shall provide written notice to the Department of any claim made in connection with the work herein, in accordance with the provisions of the applicable policy.

Article 29 – Procurement Lobbying Law

29.1 Pursuant to State Finance Law §§139-j and 139-k, this procurement includes and imposes certain restrictions on communications between the New York State Department of Environmental Conservation (Department) and a vendor during the procurement process. A vendor is restricted from making contacts from the earliest notice of intent to enter into a Contract through final award and approval of the Contract by the Department and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contract that is included among

Appendix "A"
Legal Description of the Property

FIRST NATIONWIDE OF NY, INC.
as Agent for
Old Republic National Title Insurance Company

SCHEDULE A (Description)

Title Number: FNO-14939-Q

Amended

RUNNING THENCE southerly along a line forming an interior angle of 240 degrees 10 minutes 22 seconds with the last mentioned course, 34 feet to a point;

RUNNING THENCE southeasterly along a line forming an interior angle of 127 degrees 07 minutes 01 second with the last mentioned course, 46.40 feet to a point;

RUNNING THENCE northeasterly along a line forming an interior angle of 135 degrees 17 minutes 19 seconds with the last mentioned course, 30.26 feet to a point;

RUNNING THENCE southerly along a line forming an interior angle of 231 degrees 21 minutes 04 seconds with the last mentioned course, 30.37 feet to a line distance 259.73 feet easterly from the center of the aforementioned former proposed 123rd Street as measured at right angles thereto;

RUNNING THENCE northerly along a line distant 259.73 feet easterly from the centerline of the aforementioned former proposed 123rd Street as measured at right angles thereto and forming an interior angle of 46 degrees 14 minutes 37 seconds with the last mentioned course 713.55 feet to a point;

RUNNING THENCE westerly at right angles to the last mentioned course 259.73 feet to the point or place of BEGINNING.

SAID premises being known and designated as Section 22, Block 4392 and Lot 25, Borough of Queens.

Bearings are referred to the New York City Coordinate System of the Borough of Queens. distances are in the U.S. Standard of Measurement, together with the appurtenances and all the estate and rights of the Grantor in and to said premises.

FIRST NATIONWIDE OF NY, INC.

as Agent for

Old Republic National Title Insurance Company

SCHEDULE A (Description)

Title Number: FNO-14939-Q

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point the following three courses and distances from the corner formed by the intersection of the southerly side of 31st Avenue with the westerly side of College Point Boulevard as said streets are shown on the New York City Alteration Map No. 4700 adopted August 26, 1975;

1) RUNNING westerly from said corner and along the southerly side of 31st Avenue, 1065.75 feet to the point of intersection formed by the southerly side of 31st Avenue as prolonged with the centerline of 123rd Street as said street is also shown in Alteration Map No. 4700;

2) RUNNING THENCE southerly along the centerline of said 123rd Street and forming an angle of 92 degrees, 06 minutes, 44.3 seconds on the southwest with the southerly side of 31st Avenue, 569.33 feet to the southerly limit of said 123rd Street;

3) RUNNING THENCE westerly along the southerly limit of said 123rd Street and at right angles to the last mentioned course, 10 feet to the point or place of BEGINNING.

RUNNING THENCE southerly from said point of BEGINNING, along the centerline of former proposed 123rd Street (80 feet wide) as said street is shown on Alteration Map No. 3742 and eliminated by Alteration Map No. 4700, and at right angles to the southerly limit of 123rd Street as said street is shown on Alteration Map No. 4700, 100 feet to a point;

RUNNING THENCE easterly at right angles to the last mentioned course 10 feet to a point;

RUNNING THENCE southerly at right angles to the last mentioned course 151.92 feet to a point;

RUNNING THENCE westerly at right angles to the last mentioned course 10 feet to the centerline of said former proposed 123rd Street;

RUNNING THENCE southerly, along the centerline of said former proposed 123rd Street and at right angles to the last mentioned course, 344.63 feet to a point;

RUNNING THENCE northeasterly along a line forming an interior angle of 48 degrees 16 minutes 54 seconds with the last mentioned course, 34.56 feet to a point;

RUNNING THENCE southeasterly along a line forming an interior angle of 243 degrees 49 minutes 40 seconds with the last mentioned course, 34.54 feet to a point;

RUNNING THENCE southeasterly along a line forming an interior angle of 165 degrees 23 minutes 11 seconds with the last mentioned course, 38.33 feet to a point;

RUNNING THENCE southeasterly along a line forming an interior angle of 202 degrees 19 minutes 52 seconds with the last mentioned course, 86.45 feet to a point;