

AND
NEW YORK STATE DISASTER PREPAREDNESS COMMISSION

LCARA / DPC
AGREEMENT

THIS AGREEMENT, made as of the 9th day of October, 1980
by and between the PEOPLE OF THE STATE OF NEW YORK (hereinafter referred to as
"State"), acting by and through WILLIAM C. HEINNESSY, CHAIRMAN OF THE DISASTER
PREPAREDNESS COMMISSION (hereinafter referred to as "Chairman") of the NEW YORK
STATE DISASTER PREPAREDNESS COMMISSION (hereinafter referred to as "Commission"),
whose office is in the Department of Transportation Administration and
Engineering Building, State Campus, 1220 Washington Avenue, in the City and
County of Albany and State of New York 12232, and LOVE CANAL AREA REVITALIZATION
AGENCY (hereinafter referred to as "Agency"), organized pursuant to Chapter 259
of the Laws of 1980 as an industrial development agency, whose principal office
is located at 1003 98th St. Niagara Falls N.Y. 14304

WITNESSETH:

WHEREAS, Governor Hugh L. Carey entered into an agreement with the Federal
Emergency Management Agency for an emergency No. FEMA-3020-EM, New York, dated
June 9, 1980; and

WHEREAS, it is recognized that an emergency exists requiring assistance of
the State at the Love Canal area in the County of Niagara, New York; and

WHEREAS, President Carter, on May 21, 1980, determined an emergency to exist
in the State of New York due to the adverse impact of chemical wastes in the Love
Canal Chemical Waste Land Fill in the City of Niagara Falls; and

WHEREAS, by the authority of the two provisos in the section of the Supplemental
Appropriations and Rescission Act, 1980 (Pub. L. 96-304; 94 Stat. 857), entitled
"Federal Emergency Management Agency - Funds Appropriated to the President -
Disaster Relief" (94 Stat. 876), popularly known as the Javits-Moynihan amendment
the President is authorized, from funds appropriated to the President, to provide
relocation for the families residing within the boundaries defined in the emergency
declared by the President on May 21, 1980, at the Love Canal, in the State of New
York; and

WHEREAS, the President has agreed with the Governor to provide Federal funds
for the relocation of such families by letter agreement dated October 1, 1980,
(copy attached and made a part hereof); and

WHEREAS, by Chapter 640 of the Laws of 1973, a Disaster Preparedness Commission
was created in the Executive Department to deal with all aspects of man-made or
natural disaster prevention, response and recovery and with the powers and
responsibilities, inter alia, to direct state disaster operations and coordinate
state disaster operations following the declaration of a state disaster emergency
and assist in the coordination of federal recovery efforts and coordinate recovery
assistance by state and private agencies; and

WHEREAS, Section 21 of Article 2-B of the Executive Law, as added by that Chapter 640 of the Laws of 1978, authorized the Governor to designate the Chairman of the Commission, and

WHEREAS, on March 30, 1979 Governor Carey designated William C. Hennassy, the Commissioner of Transportation, a member of the Commission by virtue of his office in accordance with Section 21 of the Executive Law, as the Chairman of such Commission, and

WHEREAS, the Governor has directed the Chairman to render such assistance as may be necessary to assist in relocation of residents of the area in the Love Canal; and

WHEREAS, by Chapter 259 of the Laws of 1980, the Love Canal Area Revitalization Agency was created as an industrial development agency to improve conditions in the Love Canal area of the County of Niagara, affecting portions of the City of Niagara Falls and the Town of Wheatfield and to make use of the funds appropriated in Chapter 732 of the Laws of 1979 and other available Federal, State and local moneys for the improvement of such conditions, the Love Canal area being limited and bounded as follows:

(a) In the city of Niagara Falls, beginning at a point where the center line of Buffalo Avenue intersects with the center line of 102nd Street, thence northerly along center line of 102nd Street and its extension to its intersection with Bergholtz Creek, thence westerly along Bergholtz Creek to its intersection with the center line of 93rd Street, thence southerly along the center line of 93rd Street including those properties on the west side of 93rd Street fronting on such street and its extension to its intersection with center line of Buffalo Avenue, thence easterly along the center line of Buffalo Avenue to the point of beginning and:

(b) In the town of Wheatfield, all real property adjacent to the city of Niagara Falls beginning at a point on the center line of 102nd Street at its intersection with the center line of Frontier Avenue; thence easterly along Frontier Avenue, including those properties on the south of Frontier Avenue fronting on such Avenue to the center line of 103rd Street, thence northerly along the center line of 103rd Street, including those properties on the east of 103rd Street fronting on such street to its intersection with the center line of Center Road, thence westerly along the center line of Center Road to its intersection with the center line of 102nd Street, including all properties on the north side of Center Road, fronting on Center Road, thence southerly along the center line of 102nd Street to point of beginning; also included are those properties fronting on the east and west sides of the extension of 103rd Street center line north from its intersection with the center line of Center Road to its terminus; also included are those properties fronting on the east side of 102nd Street north from the intersection of the center line of 102nd Street and the center line of Center Road to the intersection of the center line of 102nd Street and the center line of Colvin Boulevard; and

WHEREAS, the Chairman and the Love Canal Area Revitalization Agency have determined that it is in the best interests of the State and the Agency to have the Agency undertake all activities in connection with the relocation of residents from, and the acquisition and maintenance of property and the reclamation and revitalization of, the Love Canal area in the County of Niagara, New York.

NOW, THEREFORE, it is hereby agreed and understood between the parties hereto as follows:

1. With respect to property in the Love Canal designated area the Agency, after a request of a resident of such area and in consultation with the Chairman, shall enter into a contract for the acquisition of any such property from the respective owner thereof, shall acquire such property in its name and shall hold record title to the same, provided that in no event shall the Agency be obligated to incur any obligation or expense or to advance or make any payment in excess of the funds made available to the Agency.
2. The Agency shall rely upon and utilize the services of the Real Estate Division of the State Department of Transportation and personnel thereof (hereinafter referred to as "Division"), in the acquisition and relocation effort. In connection with acquisition and relocation, the actions of the Department of Transportation shall be in accordance with the policies established by the Agency.
3. The Division shall determine by appraisal the value of the properties to be acquired, shall negotiate the acquisition of each such property with the owner thereof and upon the conclusion of negotiations shall certify to the Agency on the negotiated purchase price. The Agency shall thereupon enter into a contract of purchase, in form and substance satisfactory to the Agency, with the owner of the involved property at the purchase price certified by the Division. The Agency shall acquire title to the property pursuant to such approved purchase contract and shall pay over to the owner the cash portion of the purchase price. Inspections of the properties and all factual determinations in respect of the condition of the properties shall be made by the Division and reported to the Agency prior to contract closings.
4. (a) In the event Federal funds for the project of relocation of families are made available to the State, the Agency shall submit to the State a schedule or schedules of anticipated cash requirements to meet its costs and expenses incurred or to be incurred for property acquisition. Such schedule shall indicate the amounts of money paid or to be paid in connection with the acquired property as well as the related costs to the Agency that are involved in such acquisition, but not including any expenses of the personnel of the Division. From the federal funds provided for the project the Comptroller shall release and pay over to the Agency funds sufficient to meet such schedules. The vouchers for each payment or release shall be in summary form and the document supporting the expenditures or anticipated expenditures shall be maintained in a secure manner by the Agency in a place readily accessible to the Chairman, the Federal Government, and the State Comptroller for the purposes of auditing such costs and expenses. Such request for payment or release of funds for costs and expenses which have been incurred, may provide for payment of 100 percent of the costs and expenses which the Agency has determined will be involved in the next succeeding quarter for relocation

of the families and acquisition of the properties. The total amount to which the State shall be obligated pursuant to the provisions of this Agreement shall not exceed the sum of \$15,000,000 consisting of Federal funds, unless a supplemental agreement is made therefor. The source of the Federal funds are a \$7,500,000 grant and a \$7,500,000 advance to the State dated October 1, 1980, by the Federal government for relocation of families to sites outside of the Love Canal designated area.

4. (b) State funds in the amount of \$2,500,000 to match the Federal grant if required, in connection with the acquisition of the properties may be made available to the Agency by the Division of Housing and Community Renewal pursuant to an Agreement dated July 31, 1980. Another \$2,500,000, and the previous \$2,500,000 if not required to match the Federal grant, may be made available to Agency by the Division of Housing and Community Renewal under the terms of such Agreement for the purpose of carrying out the obligations of the Federal-State Agreement dated October 1, 1980, relative to the continuation of the temporary relocation activities beyond November 14, 1980, until such time as the various requirements and procedures as set forth in the Federal Disaster Temporary Housing Regulations have been satisfied. The latter \$2,500,000, and the previous \$2,500,000 if not required to match the Federal grant, may also be available for the purpose of security patrols, crime prevention insurance, protective maintenance, acquisition of properties not covered under the State-Federal Agreement of October 1, 1980, demolition and site clearance and such other activities as the Chairman shall determine. The total available under the Agency-Division of Housing and Community Renewal Agreement shall not exceed the sum of \$5,000,000. In connection with such expenditure of the latter \$2,500,000, and the previous \$2,500,000 if not required to match the Federal grant, referred to above, the Agency shall submit to the Chairman within four weeks of the date of this Agreement an expenditure plan setting forth the various elements and projected costs involved in carrying out its activities. The Agency shall not undertake any such activities without the approval of the Chairman.

4. (c) Within the total amounts that may be provided for the acquisition of properties in the Love Canal area, the Director of the Budget with the consent of the State Comptroller may authorize the utilization of a combination in whole or in part of paragraphs 4.(a) and 4.(b), but in no event shall the sum of the State's obligation under this Agreement exceed \$20,000,000 (\$15,000,000 Federal funds 4(a) and \$5,000,000 4(b) State funds Housing and Community Renewal-Agency Agreement), unless a supplemental agreement is made therefor and funds are provided.

5. The Agency accepts all of the State's rights and obligations and the funds provided to the State through the Federal Emergency Management Agency by letter of agreement dated October 1, 1980. In the event the Agency has funds and/or credits or other liquid assets over and above the \$15 million Federal funds and the \$5 million State funds, and there is a scheduled payment on the Federal (FEMA) advance due in that calendar year, the Agency shall consult with and obtain the approval of the Chairman prior to committing such funds, credits or other liquid assets in excess of \$25,000 to activities of the Agency other than meeting the scheduled payment. In connection with granting such approval, the Chairman shall take into consideration the source of such funds, credits or other liquid assets; the goals, objectives, programs and activities of the Agency; and the interests of the State and Agency in the revitalization and stabilization of the Love Canal area in the City of Niagara Falls and the Town of Wheatfield. In no event shall approval be withheld where disapproval would defeat the purposes or intent of any grant or advance by the Federal, State or local government or any other funding entity.

6. All items of cost and expense shall be subject to audit by the State. In the event that the State Comptroller requires that his office approve the purchase contracts for any property acquired pursuant to the terms of this Agreement, the purchase contract shall be submitted to such State Comptroller for his approval prior to their becoming effective. The accounting records therefor shall be retained by the Agency for at least six years after completion of the State Comptroller's final audit under this Agreement, or three years after payment of the final voucher to the State by the Federal Government with respect to the emergency, whichever period shall expire last.

7. Except as herein provided, no contract for services outside the Agency for more than \$5,000 will be effective or binding as to the State unless and until the Chairman approves such contract.

8. The Agency shall cause title to the properties to be examined but shall have no responsibility for the accuracy of such examinations or for any determination as to the status or quality of title to the properties acquired. Title to the properties shall be insured, if the Agency so determines.

9. It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the State and the liability on account thereof shall be incurred by the State or the Agency beyond the moneys available for the purposes hereof except for the obligations of the State as set forth in paragraph 6 hereof.

10. The State shall have access to, and the right of use of, the property, for any purpose whatsoever and the Agency shall take such action with respect to the operation and maintenance of the property as the State shall direct.

11. The Agency agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest thereunder, or its powers to execute any contract to any person, company or corporation without the previous consent in writing of the Chairman, except for property management or conveyance purposes.

12. The rights and obligations created hereunder shall be enforceable only against the parties hereto, and nothing contained herein shall be deemed to create any right in or any right to enforce the provisions hereof by any third party.

IN WITNESS WHEREOF, the State has caused this instrument to be signed by its duly authorized Chairman and the Agency has caused this instrument to be signed by its duly authorized officer.

DISASTER PREPAREDNESS COMMISSION

BY: William C. Hennessy
William C. Hennessy, Chairman

LOVE CANAL AREA REVITALIZATION AGENCY

BY: Michael C. O'Sullivan
Chairman

APPROVED AS TO FORM:

APPROVED:

Attorney General

State Comptroller

STATE OF NEW YORK)
) SS:
COUNTY OF ALBANY)

On this 14th day of October, 1980, before me, the subscriber, personally came WILLIAM C. HENNESSY, to me known and known to me to be the Chairman of the Disaster Preparedness Commission of the State of New York, and the same person described in and who executed the within instrument, and he duly acknowledged that he executed the same as such Chairman pursuant to the statute in such case provided.

Peter S. Loomis

Notary Public

PETER S. LOOMIS
Notary Public, State of New York
Qualified in Albany County
Commission Expires March 30, 1981

STATE OF NEW YORK)
) SS:
COUNTY OF Niagara)
~~ALBANY~~

On this 9th day of October, 1980, before me personally came Michael C. O'Lushkin, to me known, who being duly sworn, did depose and say that he resides in Niagara Falls, New York, that he is the Chairman of the Love Canal Area Revitalization Agency, the Agency described in and which executed the foregoing instrument, that he know the seal of said Agency, that the seal affixed to said instrument was such Agency seal, that it was so affixed by order of the membership of said Agency, and that he signed his name thereto by like order.

Richard J. Morris

Notary Public

RICHARD J. MORRIS, Notary Public
State of New York, Monroe County
Commission Expires March 30, 1981